SUPREME COURT OF THE UNITED STATES.

No. 362.

THE STATE OF MARYLAND, ON THE RELATION OF THOMAS ANDERSON, PLAINTIFF IN ERROR,

vs.

JOHN W. BAKER, GEORGE ERNEST, AND JULIAN MAGRUDER

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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1 MARYLAND, *sct:*

At a session of the court of appeals of the State of Maryland, begun and held at the city of Annapolis, in and for said State, on the first Monday in October, being the second day of the said month, in the year of our Lord one thousand eight hundred and sixty-five, and in the independence of the United States the eighty-ninth.

Present: The honorable Richard J. Bowie, chief justice; James L. Bartol, Brice J. Goldsborough, S. Morris Cochran, and Daniel Weisel, associate justices; George Earle, clerk.

In the record of proceedings of the said court among others is the following, to wit:

2 STATE OF MARYLAND, at the relation of Thomas Anderson,
vs.
JOHN W. BAKER, GEORGE ERNEST and Julian Magruder.

Be it remembered that now here, on the first Monday in October, being the second day of the said month, in the year of our Lord one thousand eight hundred and sixty-five, the judge of the third judicial circuit of Maryland, in pursuance of the directions of the act of assembly in such case made and provided, transmit to the court of appeals here the record of proceedings of a cause which was lately depending before him in the circuit court for Montgomery county between the said State, at the relation of Thomas Anderson, complainant, and John W. Baker, George Ernest, and Julian Magruder, defendants, and wherein the said circuit court passed an order for the said John W. Baker, George Ernest, and Julian Magruder against the said State, at the relation of Thomas Anderson, and from which said order the said State, at the relation of Thomas Anderson, appealed to the court of appeals here, the tenor of which said record of proceedings is in form following, to wit:

3 STATE OF MARYLAND, *Montgomery county, sct:*

At a circuit court begun and held at the court-house, in Rockville, in and for said county, on the second Monday of August, being the fourteenth day of the same month, in the year eighteen hundred and sixty-five—

Present: The Hon. Samuel H. Berry, circ't judge; Perrie Leizear, sheriff; E. B. Prettyman, clerk.

In the record and proceedings of the same court, among others, were the following, to wit:

THOMAS ANDERSON
vs.
JOHN W. BAKER, GEORGE ERNEST, and JULIAN Magruder.

Be it remembered that heretofore, to wit, on the twenty-ninth day of August, in the year eighteen hundred and sixty-five, the said Thomas Anderson, by Robert J. Brent, W. Veirs Bouic, John Brewer,

George Peter, and Thomas Anderson, jr., his attorneys, files in court here the following petition, to wit:

STATE OF MARYLAND, *Montgomery county, to wit:*

To the honorable Samuel H. Berry, judge of the circuit court for said Montgomery county:

The petition of Thomas Anderson, of the 4th election district of said county, respectfully shows, that he was born in the said 4th election district in said county, and has continued to reside therein from his birth until the present time, a period of some sixty years, except an interval of time from the year 1827 to 1838, when he resided in the State of Ohio; that whilst residing in the district aforesaid your petitioner has always exercised the right and privilege of a citizen of Maryland, without hindrance or legal obstruction, and his right of suffrage has never been hindered or questioned until now, as hereinafter shown; that he has never committed any act by which his said citizenship could be justly forfeited or impaired; nor has he, during the recent civil war, at any time been arrested or charged with any disloyalty or other crime against the government of this State or of the United States.

Your petitioner further shows that, under and by virtue of the authority supposed to be conferred by the first art. of the constitution of this State, alleged to have been adopted on the 12th and 13th days of October, in the year of our Lord eighteen hundred and sixty-four, and by the provisions of an act of the legislature of Maryland, passed at the session of 1865, C. 174, John W. Baker, George Ernest, and Julian Magruder have been appointed and are now exercising the functions of officers of registration of voters in and for the 4th election district of said county; and your petitioner is informed and charges that said named parties assume, under said article of said constitution and the provisions of said act, to act as a board of inquiry over the loyalty of their fellow-citizens, to exclude from registration as legal vôters large classes of their fellow-citizens not deemed loyal by the said officers of registration.

4 And your petitioner is informed and charges that the same process of disfranchisement and arbitrary proscription is at this time going on in every election district and precinct of this State under color of said constitution and act of the legislature, all of which your petitioner avers to be a grievous and intolerable oppression of himself and of his fellow-citizens, unwarranted by the fundamental principles of a free government, and subversive of the guarantees and prohibitions of the federal Constitution, as will be hereinafter shown.

Your petitioner further shows that, on the 29th day of August, 1865, while the said officers of registration for said 4th election district were in session, he appeared before them, and personally demanded that his name should be unconditionally registered by them as a legal voter, on the grounds and for the reasons stated in a paper, marked A, herewith filed as a part of this petition, and which is a

copy of the paper writing read by him, and tendered by him to said John W. Baker, George Ernest, and Julian Magruder.

Your petitioner further shows that said named parties, acting in the capacity of officers of registration, have declined to recognize the just right and claim of your petitioner, and have resolved to reject him from the registry of legal voters in said district, without any just or legal cause whatever; and unless relief in the premises be afforded in your honorable court, your petitioner will be deprived of his elective franchise, and of all participation of the government of the State of which he is a citizen, and, as such, chargeable with the burdens and expenses of that government.

Your petitioner is also advised and charges that so much of said first article of the constitution of this State, and of the provisions of said act of the legislature as assume to authorize said officers of registration to disfranchise any portion of the citizens of Maryland, on the ground that they decline to take the retrospective oath prescribed in said first article of the constitution of this State, or on the ground that they are not legal citizens of this State in the opinion of the said officers of registration, is a gross violation of various clauses of the federal Constitution, and as such are to be deemed and taken as nullities in all courts of justice.

Your petitioner especially charges that by the action of and jurisdiction claimed by said officers of registration in the premises, unless restrained by the process of the courts of justice, there will be no republican government in the State of Maryland as guaranteed by the 4th section of the 4th article of the Constitution of the United States; but in lieu thereof an oligarchical form of government will be and is now in process of being created by the machinery and contrivance of said officers of registration, acting under and in obedience to said first article of said constitution of Maryland and the provisions of said act of the legislature of this State.

Your petitioner is also advised and charges that the oath required by said first article of said constitution is null and void, because it is an ex post facto law, and as such is interdicted and annulled by the 10th section of the first article of the Constitution of the United States.

Your petitioner is also advised and charges that the attempt and purpose manifested in said first article of said constitution of the State of Maryland and the provisions of said act of said legislature are in the nature of a bill of attainder, and as such null and void under the 10th section of the first article of the Constitution of the United States.

And your petitioner is also advised and charges that unless the jurisdiction and powers claimed by said John W. Baker, George Ernest, and Julian Magruder, acting as officers of registration for said 4th election district of said county, are restrained and prevented by legal process, he and many of his fellow-citizens will be deprived of their liberty and property without due process of law, contrary to the prohibition found in the 5th article of the amendments to the Constitution of the United States.

5 Wherefore and inasmuch as your petitioner has no other adequate or specific remedy in the premises, he humbly prays that your honorable court will award the State's writ of mandamus, directed to and commanding the said John W. Baker, George Ernest, and Julian Magruder to register the name of your petitioner on the column of legal voters in said 4th election district of Montgomery county. And as in duty bound your petitioner will ever pray.

R. J. BRENT,
W. VEIRS BOUIC,
JOHN BREWER,
GEORGE PETER,
THOMAS ANDERSON, JR.,
Att'ys for Pet'r.

[Rev. 50 cts.]

STATE OF MARYLAND, *Montgomery county, to wit:*

In the circuit court for Montgomery county personally appeared the aforesaid petitioner, Thomas Anderson, this 29th day of August, 1865, and made oath in due form of law, in open court, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

E. B. PRETTYMAN, *Cl'k.*

[Int. 5 ct. rev.]

STATE OF MARYLAND, *Montgomery county, to wit:*

Ordered by the circuit court for said Montgomery county, on consideration of the foregoing petition, this 29th day of August, 1865, that a rule be laid on John W. Baker, George Ernest, and Julian Magruder, the parties therein named, requiring them to show cause on or before the 12th day of September, 1865, why a writ of mandamus should not issue as prayed by said petitioner; provided that said rule be served on said named parties by giving to each of them a copy of this petition and order on or before the 5th day of September, 1865.

SAM'L H. BERRY.

In the circuit court for Montgomery county, August term, 1865.

THOMAS ANDERSON
vs.
JOHN W. BAKER, GEORGE ERNEST, and Julian Magruder.

August 29th, motion and order that Thomas Anderson, the plaintiff, serve the rule laid on the defendants by giving to each of said defendants a copy of the petition and order of court filed in this cause on or before the day given in said order of court.

Per order: E. B. PRETTYMAN, *Cl'k.*

I hereby certify that I served the above petition, order, and rule of court, on the said John W. Baker, George Ernest, and Julian Magruder, by delivering to each of them a copy of said petition and Exhibit A, and of said order and rule of court, this 29th day of August, 1865.

PERRIE LEIZEAR, *Sheriff.*

The paper marked A and referred to as part of the aforegoing petition is as follows :

To Messrs. John W. Baker, George Ernest, and Julian Magruder, officers of registration of voters in and for the 4th election district of Montgomery county, in the State of Maryland :

GENTLEMEN: I claim that my name shall be registered by you as a legal voter, in your election district, for the following reasons :

1st. I was born in this district, and have resided therein during my whole life of sixty years, except from the year 1827 to 1838, when I resided in the State of Ohio.

2d. I am a free white male citizen of the State of Maryland,
6 and as such I have always, while residing in this State, since I have arrived at the age of twenty-one years, been allowed my vote as a citizen and qualified elector in this district.

3d. Because I have never committed any act which has subjected me to military or civil arrest; nor have I in any manner surrendered or forfeited my just title as a citizen of this State and of the United States.

In examining the law and the new constitution of this State, under which you profess to be acting as officers of registration, I see that you are directed to subject me, as other citizens of this State, to the tests of certain inquiries and answers on oath; and that you are authorized to disqualify me as a voter, notwithstanding I may answer satisfactorily all inquiries, and take the proposed oaths; in other words, you claim the authority in your discretion, in case I submit to your tests, to insult me by saying that you do not believe my sworn statements; and therefore you may disfranchise me by refusing to register my name as a qualified voter. As a free citizen, conscious of my past rectitude, I can never submit to the degradation of laying my citizenship and birthright at the feet of arbitrary power, in whatever form or disguise it may present itself. I therefore demand, as my right, that you shall forthwith register my name in the column of qualified voters. In making this demand, I pronounce so much of the new constitution of this State, and the act of the legislature, as confers upon you those despotic powers over the dearest rights and liberty of your fellow-citizens, to be null and void; of glaring usurpations of power, unwarranted by the fundamental principles of free government; and are directly in conflict with the letter and spirit of several provisions of the federal Constitution, which I regard as the paramount law of the land. In the event of your declining at once to

5 Wherefore and inasmuch as your petitioner has no other adequate or specific remedy in the premises, he humbly prays that your honorable court will award the State's writ of mandamus, directed to and commanding the said John W. Baker, George Ernest, and Julian Magruder to register the name of your petitioner on the column of legal voters in said 4th election district of Montgomery county. And as in duty bound your petitioner will ever pray.

R. J. BRENT,
W. VEIRS BOUIC,
JOHN BREWER,
GEORGE PETER,
THOMAS ANDERSON, JR.,
Att'ys for Pet'r.

[Rev. 50 cts.]

STATE OF MARYLAND, *Montgomery county, to wit:*

In the circuit court for Montgomery county personally appeared the aforesaid petitioner, Thomas Anderson, this 29th day of August, 1865, and made oath in due form of law, in open court, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

E. B. PRETTYMAN, *Cl'k.*

[Int. 5 ct. rev.]

STATE OF MARYLAND, *Montgomery county, to wit:*

Ordered by the circuit court for said Montgomery county, on consideration of the foregoing petition, this 29th day of August, 1865, that a rule be laid on John W. Baker, George Ernest, and Julian Magruder, the parties therein named, requiring them to show cause on or before the 12th day of September, 1865, why a writ of mandamus should not issue as prayed by said petitioner; provided that said rule be served on said named parties by giving to each of them a copy of this petition and order on or before the 5th day of September, 1865.

SAM'L H. BERRY.

In the circuit court for Montgomery county, August term, 1865.

THOMAS ANDERSON
vs.
JOHN W. BAKER, GEORGE ERNEST, and Julian Magruder.

August 29th, motion and order that Thomas Anderson, the plaintiff, serve the rule laid on the defendants by giving to each of said defendants a copy of the petition and order of court filed in this cause on or before the day given in said order of court.

Per order: E. B. PRETTYMAN, *Cl'k.*

I hereby certify that I served the above petition, order, and rule of court, on the said John W. Baker, George Ernest, and Julian Magruder, by delivering to each of them a copy of said petition and Exhibit A, and of said order and rule of court, this 29th day of August, 1865.

PERRIE LEIZEAR, *Sheriff.*

The paper marked A and referred to as part of the aforegoing petition is as follows:

To Messrs. John W. Baker, George Ernest, and Julian Magruder, officers of registration of voters in and for the 4th election district of Montgomery county, in the State of Maryland:

GENTLEMEN: I claim that my name shall be registered by you as a legal voter, in your election district, for the following reasons:

1st. I was born in this district, and have resided therein during my whole life of sixty years, except from the year 1827 to 1838, when I resided in the State of Ohio.

2d. I am a free white male citizen of the State of Maryland,
6 and as such I have always, while residing in this State, since I have arrived at the age of twenty-one years, been allowed my vote as a citizen and qualified elector in this district.

3d. Because I have never committed any act which has subjected me to military or civil arrest; nor have I in any manner surrendered or forfeited my just title as a citizen of this State and of the United States.

In examining the law and the new constitution of this State, under which you profess to be acting as officers of registration, I see that you are directed to subject me, as other citizens of this State, to the tests of certain inquiries and answers on oath; and that you are authorized to disqualify me as a voter, notwithstanding I may answer satisfactorily all inquiries, and take the proposed oaths; in other words, you claim the authority in your discretion, in case I submit to your tests, to insult me by saying that you do not believe my sworn statements; and therefore you may disfranchise me by refusing to register my name as a qualified voter. As a free citizen, conscious of my past rectitude, I can never submit to the degradation of laying my citizenship and birthright at the feet of arbitrary power, in whatever form or disguise it may present itself. I therefore demand, as my right, that you shall forthwith register my name in the column of qualified voters. In making this demand, I pronounce so much of the new constitution of this State, and the act of the legislature, as confers upon you those despotic powers over the dearest rights and liberty of your fellow-citizens, to be null and void; of glaring usurpations of power, unwarranted by the fundamental principles of free government; and are directly in conflict with the letter and spirit of several provisions of the federal Constitution, which I regard as the paramount law of the land. In the event of your declining at once to

register my name as a legal voter, I hereby protest against your usurpation of power; and I shall claim the protection of our federal Constitution by all lawful means at my command.

THOMAS ANDERSON.

Rockville, Aug. 29, 1865.

We, the undersigned, citizens of the aforesaid election district, do hereby certify that the aforegoing paper writing is a true copy of the original, which was this day delivered by the said Thomas Anderson, and read by him in our presence, to the aforesaid officers of registration; and that we give this certificate at the request of said Anderson.

GEORGE PETER.
W. VEIRS BOUIC.

Rockville, Aug. 29, 1865.

[Int. 5 ct. rev.]

On which said twelfth day of September, in the year eighteen hundred and sixty-five, the said John W. Baker and George Ernest, by Alexander Randall and Richard M. Williams, their attorneys, file in court here the following answers, viz:

In the circuit court for Montg'y county, Aug't term, 1865.

THOMAS ANDERSON
vs.
JOHN W. BAKER *et al.*

STATE OF MARYLAND, *Montgomery county:*

To the honorable Samuel H. Berry, judge of the circuit court for Montgomery county:

John W. Baker and George Ernest, of Montgomery county, in obedience to the order of your honor, of the 29 August last passed, on the petition of Thomas Anderson, of said county, laying a rule on your respondents, the said Baker and Ernest, to show cause on or before the 12th of September instant why a writ of mandamus should not be issued as prayed by the said petition, beg leave respectfully to show cause in this their answer and return.

7 These respondents do not know, as is alleged in the said petition, that the petitioner was born in the 4th election district of Montgomery county, or that he has continued to reside therein from his birth until the present time, except the interval as therein stated; nor do these respondents know that the petitioner, whilst residing in said district, has always exercised the right and privilege of a citizen of Maryland, without hindrance or legal obstruction; nor do they know that the petitioner's right of suffrage has never been hindered or questioned until the time of filing his petition, or about that time; nor do these respondents know that the petitioner never committed any act by which his citizenship could be justly forfeited or impaired; nor that the petitioner, during the recent civil war, has

not been at any time arrested or charged with any disloyalty or other crime against the government of this State, or of the United States; and not being able to deny or admit the same, they leave the petitioner to establish these averments in his petition, as he may deem proper.

These respondents, further answering and showing cause, admit that under and by virtue of the authority conferred by the constitution of this State, and the act of the general assembly of Maryland passed at their last session, (1865,) ch. 174, they, these respondents, Baker and Ernest, with their colleague, Julian Magruder, have been appointed and are now exercising the functions and duties of officers of registration of voters in and for the fourth election district of Montgomery county, and that they have assumed under the constitution and law the performance of all the duties thereby reposed in them.

But these respondents deny that they have assumed, under the first article of the constitution aforesaid, and the provisions of the said act, to act as a board of inquiry over the loyalty of their fellow-citizens, to exclude from registration as legal voters large classes of their fellow-citizens not deemed loyal by these respondents.

These respondents do not know nor believe that any such process of disfranchisement and arbitrary proscription was, at or about the time of filing the said petition, going on in every district and precinct of this State, under color of the said constitution and act of the legislature, which the petitioner avers to be a grievous and intolerable oppression of himself and his fellow-citizens, unwarranted by the fundamental principles of a free government, and subversive of the guarantees and prohibitions of the federal Constitution, as is charged in the said petition.

These respondents admit that, on the 29th day of August, 1865, while these respondents as the officers of registration of voters, as aforesaid, in session, performing their duties as such, the petitioner, Thomas Anderson, appeared before them and their colleague, and personally demanded that his name should be unconditionally registered by them as a legal voter, on the ground and for the reasons stated in a paper marked A, filed, as these respondents believe, with his said petition as a part thereof, and which they believe is a copy of the paper writing read by him and tendered by him to these respondents.

These respondents deny that they, acting in the capacity of officers of registration, have declined to recognize the just right and claim of the petitioner, or have resolved to reject him from the registry of legal voters in said district, without any just or legal cause whatsoever. On the contrary thereof, the petitioner has refused to comply with the constitution and law of this State, and to take the oath required therein, in order to enable your respondents to decide then and there on his just right and claim as a legal voter.

These respondents also deny that, unless relief in the premises be afforded by this honorable court, the petitioner will be deprived of his elective franchise, and of all participation in the government of

the State of which the petitioner claims to be a citizen, and as such avers he is chargeablo with the burdens and expenses of government.

Your respondents deny, as they are advised, that the first article of the constitution of this State, and the provisions of the act of 8 assembly aforesaid, or any part thereof, is a gross violation of the federal Constitution, or any part thereof, or are to be deemed or taken as nullities in all courts of justice. On the contrary thereof, these respondents are advised and so aver that the same are just, and accord with the Constitution of the United States, and are binding on all the citizens of this State, and all persons living in this State, and will be so received in all the courts of this State, and by your respondents, all of whom have sworn to support the same.

Your respondents deny that, by the action and jurisdiction claimed by them and other officers of registration in the premises, unless restrained by the proper process of the courts of justice, there will be no republican government in the State of Maryland, as guaranteed by the 4th section of the 4th article of the Constitution of the United States, as averred in the said petition. They also deny that in lieu thereof an oligarchical form of government will be or is now in process of being created by the machinery and contrivance of the said officers of registration, acting under and in obedience to the said first article of the said constitution of Maryland, and the provisions of the said act of the legislature of this State, as is most erroneously alleged in the said petition.

Your respondents, as advised, also deny that the oath required by the first article of the constitution is null and void because it is an ex post facto law, and as such interdicted and annulled by the 10th section of the first article of the Constitution of the United States.

Your respondents, as advised, also deny that the attempt and purpose manifested in the first article of the constitution of Maryland, and the provisions of the said act of assembly, are in the nature of a bill of attainder; and, as such, null and void under the 10th section of the first article of the Constitution of the United States.

Your respondents also deny that unless the jurisdiction and powers claimed by them, acting as officers of registration of voters for the said fourth election district of the county aforesaid, are restrained and prevented by legal process, the petitioner and many others of his fellow-citizens will be deprived of their liberty and property without due process of law, contrary to the prohibition found in the 5th article of the amendments to the Constitution of the United States.

Your respondents, as also advised, do deny that the petitioner has not adequate and specific remedy for any real grievance in the premises he may have; but whether he have such remedy for his pretended grievances, these respondents know not.

But these respondents are advised, and now aver, and will insist, that the remedy *by writ of mandamus*, for which the petitioner prays in his said petition, to be directed to your respondents and their col-

league, commanding them to register the name of the petitioner on the column of legal voters in the said 4th election district of Montgomery county, is a power beyond the power and jurisdiction of this court to grant, and subversive of the first and fundamental principles of the constitution and government of the State of Maryland.

Whereas your respondents and all the officers thereof have solemnly sworn to "*bear true allegiance to the State of Maryland, and support the constitution and laws thereof.*"

Your respondents having answered the said petition, now show the following causes and reasons why this mandamus should not be issued as prayed for by the petitioner, among other causes and reasons which your respondents may hereafter present to this court:

First. This court has no jurisdiction over the subject-matter of this petition.

1st. The political department of the gov't of the State of Maryland having determined that the constitution was ratified by the people of this State, that decision cannot be inquired into by any judicial proceedings in this State; the judicial power of the State adopts and follows the decision of the political department on that subject.

9 2d. Because the courts of this State having necessarily, by their organization, and by the execution of the powers conferred on them by the State constitution, assumed its validity and obligation upon themselves and the people of this State, the courts of the United States will adopt and follow these decisions of the courts of the State in questions concerning *concerning* the constitution and laws of the State, and refuse to entertain any proceeding calling them In question.

3d. Because the right of suffrage in the State belongs exclusively to themselves, and is restricted and regulated as the people thereof may therein prescribe, with which the courts of the United States have nothing to do; and so far as the Constitution of the United States has provided for any emergency of this kind, and authorized the general government to interfere in the domestic concerns of a State, it has treated the subject as political in its nature, and placed the power in the hands of that department and not in the courts.

4th. Because the constitution and laws of the State of Maryland have conferred upon these respondents and their colleagues special powers and exclusive jurisdiction over the subject of the registration of voters as aforesaid, and no court of this State has any jurisdiction by mandamus to control or direct these respondents in the discharge of their official duties.

5th. Because, by the eighth article of the declaration of rights, it is declared that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other, and no person exercising the functions of one of the said departments shall assume or discharge the duties of any other; and the issuing of this mandamus, according to the prayer of the petitioner, would unite and combine powers so declared to be forever separate and dis-

tinct, and in fact make this court the sole officer of registration, and the exclusive judge of elections.

Secondly. According to the settled authorities in this State and the United States, if this court had jurisdiction, the petitioner has not made out such a case as will authorize this court to grant him the mandamus prayed for in his petition.

6th. Because by law there is a specific and adequate remedy for the supposed grievance of the petitioner; and he is not without redress in the premises, if he have any legal cause of complaint.

7th. Because this court cannot act by mandamus directly upon these respondents and their colleague, requiring them to do any official act which by the constitution and law is submitted to their judgment and discretion, as officers of the registration of voters, or in any manner control or guide their judgment and discretion in the ordinary discharge of their official duty.

8th. Because the issuing of mandamus by the court is a summary exercise of high judicial discretion, even where the power so to do is conceded, and will be exercised only in cases of necessity, and with caution and prudent reluctance; and when a case is of doubtful necessity, or its probable effects upon the community of a questionable character, the case does not present those conditions prescribed by the authorities, to entitle it to this writ. But when, as in the present case, to grant this writ would be assuming a power never before exercised on a subject of vital constitutional interest to the people of the entire State, and at a time of great public excitement, by which writ the sworn officers of the State may be required to violate their oaths if they obey its command, this court will not hesitate to exercise that discretion it always has in such cases to refuse to grant the mandamus, and to leave the petitioner to his remedy with which the law has provided him.

9th. Because the petitioner predicates his right to this writ of mandamus upon the ground that the first article of the constitution of Maryland, and the act of 1865, ch. 174, are nullities, and of no binding effect in the courts of law or elsewhere; and yet, by the prayer of the petitioner, he prays that this court, by mandamus to be directed to these respondents, will command these respondents to execute these nullities and law of no binding effect, and that, too, in violation of their provisions.

All of which is respectfully submitted by these respondents, and they pray to be dismissed with their costs of suit, &c.

JOHN W. BAKER.
GEORGE ERNEST.
A. RANDALL,
Att'y Gen'l of Md.
RICH'D M. WILLIAMS,
For Respondent.

STATE OF MARYLAND, *Montgomery county, to wit:*

Be it remembered that on this twelfth day of Sept., in the year *in the year* eighteen hundred and sixty-five, before me, the subscriber, a

justice of the peace of the said State, in and for said county, personally appeared the respondents, John W. Baker and George Ernest, and made oath in due form of law that the facts and statements in the aforegoing answer are true, to the best of their knowledge and belief.

Sworn before—

BERNARD MONDAY, *J. P.*

[Int. 5 ct. rev.]

And on the same day, to wit, on the twelfth day of September, in the year eighteen hundred and sixty-five, the said Julian Magruder, in his own proper person, files in court here his separate answer as follows, viz:

In the circuit court for Montgomery county, August term, 1865.

JOHN W. BAKER, GEORGE ERNEST, and JULIAN Magruder *ats.* THOMAS ANDERSON.	Pet'n for writ of mandamus.

The separate answer of Julian Magruder, one of the defendants, to the petition of Thomas Anderson, in said court, against John W. Baker, George Ernest, and himself, filed.

This respondent admits the facts stated in said petition to be true; and that he has had due notice of said petition and rule of court passed thereon.

And this respondent, further answering, says that if said petitioner had taken the oaths required by the constitution and law, and answered satisfactorily all legal questions, he would have voted to register his name in the column of qualified voters, without further proof on his part; unless his right to be so registered had been duly challenged upon some ground of disqualification specially contained in the constitution.

Had such charges been made against said Anderson, this respondent would have required the charge to be proved by the testimony of competent witnesses, under oath. He would have allowed said petitioner to cross-examine the witnesses; and to have such witnesses as he might have desired summoned and examined under oath in his defence. After hearing all the testimony on both sides, he would have decided the case as he deemed just and right.

Inasmuch as the petitioner refused to take the oaths above mentioned, your respondent did not consider the law authorized the petitioner to be registered, and this respondent declined to register him.

This respondent is unable to say anything in relation to the several questions of constitutional law raised by the petition, but leaves that whole matter to the action of the court in this case, provided the court have jurisdiction therein.

Having fully answered said petition, this respondent prays hence to be dismissed, &c.

JULIAN MAGRUDER.

11 STATE OF MARYLAND, *Montgomery county, to wit:*

I hereby certify, that on this eleventh day of September, in the year eighteen hundred and sixty-five, before the subscriber, a justice of the peace of said State, in and for the fourth election district of said county, personally appeared Julian Magruder, and made oath in due form of law that the matters and things stated in the aforegoing answer are true to the best of his knowledge and belief.

Sworn before BERNARD MONDAY, *J. P.*

[Int. 5 cts. R.]

And thereupon the said Thomas Anderson, by his attorneys aforesaid, files in court here the following motion and reasons to quash and set aside the foregoing answers, to wit:

Circuit court for Montgomery county.

STATE OF MARYLAND, *ex relatione* THOMAS Anderson
vs.
JOHN W. BAKER, GEORGE ERNEST, and Julian Magruder.

In the above-entitled case, the above-named relator, a petitioner, Thomas Anderson, moves the court here to quash and set aside the returns made by the above defendants.

1st. Because and each of them are defective, inconsistent, and insufficient on their face.

2ndly. Because the said returns, and each of them, fail to show any legal cause or justification for the refusal of said defendants to register the said relator as a legal voter in the 4th election district of Montgomery county.

3rdly. For other good and sufficient reasons apparent on the face of said returns.

ROBERT J. BRENT.
W. VEIRS BOUIC.
J. BREWER & PETER.

Whereupon the court pass the following order, viz:

In the circuit court for Montgomery county.

STATE OF MARYLAND, *ex relatione of* THOMAS Anderson,
vs.
JOHN W. BAKER, GEORGE ERNEST, and Julian Magruder.

On consideration of the foregoing petition, answers, and motion to quash, the court being of opinion that no sufficient grounds are stated in said petition for the interposition of this court in the matter thereof, it is ordered that the motion to quash said returns of said defendants,

be and the same is hereby overruled. And it is further ordered that the said be and the same is hereby dismissed, with costs of this court, this 13th day of September, 1865.

SAM'L H. BERRY.

And thereupon the said Thomas Anderson by his attorneys files in court here the following prayer, viz:

In the circuit court for Montgomery county.—Application for mandamus.

STATE OF MARYLAND, *ex relatione of* THOMAS Anderson,
vs.
JOHN W. BAKER, GEORGE ERNEST, and Julian Magruder.

12 The petitioner prays the court to grant an appeal from the decision in this case.

R. J. BRENT,
W. VEIRS BOUIC,
J. BREWER & PETER, and
T. ANDERSON, Jr.

Whereupon the court pass the following order, viz:
The appeal prayed in this case by the petitioner is hereby granted by this court this 13th Sept., 1865.

S. H. BERRY.

It is thereupon ordered by the court here that a transcript of the record and proceedings in the plea aforesaid, with all things thereunto relating, be transmitted to the court of appeals of Maryland, and the same is transmitted accordingly.

In testimony that the aforegoing has been truly taken and copied from the record and proceedings in the circuit court for Montgomery county, I hereunto set my hand and affix the seal of said circuit court this fifteenth day of September, eighteen hundred and sixty-five.

[SEAL'S PLACE.] E. B. PRETTYMAN, *Cl'k.*

[U. S. rev. stamp, 5 cts]

Plaintiff's costs	$8 35
Cost of record with seal and certificate	12 15
Defendants' costs	6 20

And now come into the court of appeals here as well the said State, at the relation of Thomas Anderson, by Reverdy Johnson, Thomas G. Pratt, and Robert J. Brent, esquires, his attorneys, as the said John W. Baker, George Ernest, and Julian Magruder, by honorable Alexander Randall, attorney general of Maryland, and Richard M.
13 Williams, esquire, their attorneys, and thereupon, on motion of the said John W. Baker, George Ernest, and Julian Magru-

der, by their attorneys aforesaid, it is ruled by the court here that the said State, at the relation of Thomas Anderson, assign the errors in the record of proceedings aforesaid, or in the giving the order aforesaid, so as aforesaid brought before the court of appeals here, for correcting the errors supposed to be therein, or an order by the court of appeals here will be entered against him in default thereof, And the said State, at the relation of Thomas Anderson, by his attorneys aforesaid, says that in the record of proceedings aforesaid, and also in the giving of order aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the order aforesaid, in the cause aforesaid given, was given for the said John W. Baker, George Ernest, and Julian Magruder, against the said State, at the relation of Thomas Anderson, when by the law of the land that order ought to have been given for the said State, at the relation of Thomas Anderson, against the said John W. Baker, George Ernest, and Julian Magruder; therefore in that there is manifest error, and
14 he prays that the order aforesaid, for that error and others, being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void, and that it, the said State, at the relation of Thomas Anderson, may be restored to all things which he hath lost by occasion of the said order, and that the said John W. Baker, George Ernest, and Julian Magruder may rejoin to the errors aforesaid, and so forth. And thereupon it is ruled by the court of appeals here that the said John W. Baker, George Ernest, and Julian Magruder, join in the errors by the said State, at the relation of Thomas Anderson above assigned in the record of proceedings aforesaid, or by order of the court of appeals here will be rendered against them in default thereof. And the said John W. Baker, George Ernest, and Julian Magruder, by their attorneys aforesaid, say there is no error in the record of proceedings aforesaid, nor in the giving of the order aforesaid, and they pray that the court of appeals here will proceed to the examination as well of the record of proceedings aforesaid as of the matters aforesaid, by the said State, at the relation of Thomas Anderson above for error assigned, and that the said order may in all things be affirmed, and so forth.

15 Whereupon, as well the record and proceedings aforesaid, and the order given in form aforesaid, as the matters aforesaid, by the said State, at the relation of Thomas Anderson, above for error assigned, being seen and by the court of appeals here fully understood, and mature deliberation thereupon had, for that it appears to the court of appeals here that there is no error in the record of proceedings aforesaid, nor in the giving of the order aforesaid; therefore it is considered by the court of appeals here that the order aforesaid given in form aforesaid, be in all things affirmed and stand in full force and effect, the said causes for error above assigned and alleged in anywise notwithstanding.

And it is further considered by the court of appeals here that the said John W. Baker, George Ernest, and Julian Magruder, have execution against the said Thomas Anderson, as well for the sum of six dollars and twenty cents, costs and charges aforesaid adjudged

unto them in the said circuit court for Montgomery county, as also the sum of sixty-nine dollars and twenty cents adjudged unto the said John W. Baker, George Ernest, and Julian Magruder, by
16 the court of appeals here, on their assent for their costs and charges which they sustained by occasion of the delay of the execution of the order aforesaid, by pretext of the prosecution of the said appeal by the said State, at the relation of Thomas Anderson, for the correcting of errors of and upon the premises as aforesaid prosecuted, &c.

Thereupon the court of appeals here delivered and filed their
17 written opinions, which are in the words following, to wit:

THOMAS ANDERSON
vs.
JOHN W. BAKER, GEORGE ERNEST, and Julian Magruder.

Chief Justice Bowie delivered the following opinion:

This is substantially an inquiry into the power of the people of a State, in convention assembled, to regulate the elective franchise, and prescribe the qualifications and disqualifications of voters.

It is not to be determined by the passions or the prejudices of the hour, but upon principles which lie at the base of all government.

Not only Maryland, but all the States of the Union, and those which may be admitted, are deeply interested in the principles in question.

It is the first instance in which the acts of a convention
18 have been sought to be restrained by judicial interposition, upon the ground of their inconsistency with the federal Constitution. The novelty as well as the importance of the questions dictate the utmost caution in arriving at conclusions, which may prejudice not individuals only but communities of men. It is the highest exercise of judicial authority to set aside legislative acts because of their violation of the fundamental law. How transcendent the power which annuls the organic law of the State from which it derives its being! "All judicial authority presupposes the validity of the constitution under which it acts."

In the distribution of powers among different functionaries, it often happens that each functionary or department must decide upon the constitutionality of the exercise of such power, and in many cases these decisions become final and conclusive, being from their nature and character incapable of revision. "Thus in measures exclusively of a political, legislative, or executive character, as the supreme authority as to these questions belongs to the legislative and execu-
19 tive departments, they cannot be re-examined elsewhere." (1 Story, Con., sec. 374.) "The remedy in such cases is solely by an appeal to the people at the elections, or by the salutary power of amendment provided by the constitution itself." (Ibid.)

The convention concentrated in itself all these powers; its members assumed the same oath to support the Constitution of the United

States which is taken by all officers, State and federal, and must be presumed to have been equally observant of its obligations.

The powers of a convention of the people of the State, assembled to frame a form of government, are nowhere defined. It is the right of the people to alter or abolish or institute a new government, "laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." The convention is the depository of the residuary or reserved sovereignty of the people, unlimited except so far as restrained by the Constitution of the United States and the moral law. Whether their action is dependent upon the subsequent ratification
20 of the people or not, is not clearly established; but when ratified and adopted or acquiesced in, their acts are unquestionably within the limits prescribed. The wisdom or wantonness of the act, its effect upon majorities or minorities, are not subjects of judicial cognizance. These are determined by their adoption. The court are not to inquire how many will be affected by their decision, or look to the multitude for their vindication. The rights of a single citizen are as valuable in the eye of the law as those of thousands.

Unity in the great ends and objects of government is the source of all political power in republics. For the promotion of these objects the people of the United States ordained and established a constitution, which was the supreme law, and erected a national governments to which they owed paramount allegiance. (2 Hill, S. C. Rep., 246.)

This supreme government was assailed, its authority defied, its capital invested, the territory of Maryland (whose people had adopted it) invaded by armies, her towns placed under contribution,
21 her citizens slain and imprisoned, in the name and on behalf of the Confederate States of America.

A sovereign convention of the people, assembled in the midst of this civil convulsion, endeavored to strengthen and cement the Union, by removing the great causes of rebellion, the motives for its continuance, encouragement, and support; and to rescue themselves from anarchy and social as well as civil war.

They framed a declaration of rights and constitution, submitted them to the people for ratification, and after their adoption had been proclaimed, the old government was superseded and a new one inaugurated. The executive, legislative, and judicial departments have all sworn to support and maintain it as such. This constitution, it is conceded, must be assumed and recognized as the organic law of the State.

The chief characteristics which distinguish it from former instruments of the kind are, the declaration of the fundamental principle that "Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and is not
22 bound by any law or ordinance of this State in contravention or subversion thereof," its incorporation with the right of suffrage, and the abolition of involuntary servitude except for crime.

It is manifest that a leading object of the convention was to repudiate the doctrine that any State could, by law or ordinance, absolve its citizens from the obligation of obedience to the Constitution and government of the United States, and to render the Union indissoluble by excluding from the polls and offices of the State all who had actively participated in promoting the rebellion or given them aid and comfort.

"Allegiance is the ligature that binds the citizen to the government which protects him." It is the very antipode of treason, which, according to the common law definition, is a violation of the obligation of allegiance. The Confederate States had attempted to dissolve the bond of Union and legalize treason by the sophistry of secession. Some States yielded only a partial allegiance. Maryland avowed paramount allegiance as the antidote of the right of
23 secession. The prevalence of this political theory was urged by one of the counsel for the relator in extenuation of those engaged in the rebellion. Its existence is not less an apology (if one is needed) for the action of the convention. If it so pervaded the people that organized armies were ready to destroy the government their fathers framed, it became the more necessary for the friends of that government to strengthen the hands of those who were charged with its defence. Without some such provision citizens of Maryland in arms against the United States would have been qualified voters at the ensuing elections. The soldiers of Stuart and Early, should the war have continued, might have claimed the right of suffrage unchallenged under a constitution professing paramount allegiance to the United States; such an absurdity would have been too glaring to contemplate.

In promotion of this general purpose the general assembly were required to provide by law for a uniform registration of the names of voters, which should be evidence of their qualification at elections thereafter held, and to make effective the provisions of the
24 Constitution disfranchising certain classes of persons. (Const., art. 1, sec. 2d; art. 3d, sec. 41.)

In pursuance of these express constitutional commands, the act of the 24th March, 1865, was passed.

It is insisted this law is null and void, because it violates the Constitution of the United States and the constitution of the State in execution of which it was enacted; and further, that the 4th section of art. 1 of the constitution of Maryland, disqualifying certain classes, is in conflict with that of the United States, and therefore void.

Three propositions are assumed as the basis of these conclusions:

1st. The franchise of voting is an inalienable right of property "sui generis."

2d. Section 4 of art. 1 of the constitution of Md. and the registry law are in the nature of a bill of attainder, which includes also bills of pains and penalties.

3d. The disqualifications, including the test oath, declared
25 by section 4, art. 1, and the provisions of the registration act, are violations of sec. 10, art. 1, of the Constitution of the United

States, declaring, "No State shall pass any bill of attainder or ex post facto law." It is conceded by the argument of the senior counsel for the relator that sovereign conventions of the people, prior to the adoption of the federal Constitution, had unlimited power to fix, change, or modify the qualifications of voters, but since its adoption they are restrained by the 10th sec. of art. 1 of that instrument. This, we apprehend, is a "petitio principii:" it is the question before us, whether, properly construed, there is any limitation upon the power the people of the States previously possessed and exercised in that respect. There is no allusion to any such purpose in the cotemporaneous expositions or subsequent commentaries on the federal Constitution by its friends or its adversaries. On the contrary, the inference is almost irresistible, no such limitation would have been tolerated. (Rawle on the Constitution, ch. 4, p. 40; Story on the Const., vol. 1, sec. 548.)

26 Among the absolute, unqualified rights of the States is that of regulating the elective franchise; it is the foundation of State authority—the most important political function exercised by the people in their sovereign capacity. The third article of the declaration of rights affirms "that the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof."

Whilst "the right of the people to participate in the legislature is the best security of liberty and foundation of all free government," yet it is subordinate to the higher power of regulating the qualifications of the electors and the elected.

The original power of the people in their aggregate political capacity is delegated, in the form of suffrage, to such persons as they deem proper for the safety of the commonwealth; hence the right is limited to "every free white male citizen having the qualifications prescribed by the constitution." Citizenship and suffrage are by no means inseparable; the latter is not one of the universal inalienable rights with which men are endowed by their Creator, but is altogether conventional.

27 Story, treating of this subject, says: "Every constitution of government in these United States has assumed, as a fundamental principle, the right of the people of the State to alter, abolish, and modify the form of its own government, according to the sovereign pleasure of the people. In fact, the people of each State have gone much further, and settled a far more critical question, by deciding who shall be the voters entitled to approve and reject the constitution framed by a delegated body under their direction." (1 Story on the Const., ch. 9, sec. 581.) "From this it will be seen how little even in the most free of republican governments any abstract right of suffrage or any original and indefeasible privilege has been recognized in practice. (Ibid.) * * * * "In no two of these State constitutions will it be found that the qualifications of the voters are settled upon the same uniform basis. So that we have the most abundant proofs that, among a free and enlightened people convened for the purpose of establishing their own forms of government

28 and the rights of their own voters, the question as to the due regulation of the qualifications has been deemed a matter of mere State policy, and varied to meet the wants, to suit the prejudices, and to foster the interests of the majority. An absolute indefeasible right to elect or be elected seems never to have been asserted on one side or denied on the other; but the subject has been freely canvassed, as one of mere civil polity, to be arranged upon such a basis as the majority may deem expedient with reference to the moral, physical, and intellectual condition of the particular State." (Ibid., sec. 582.)

None of the elementary writers include the right of suffrage among the rights of property or person. It is not an absolute unqualified personal right. Lord Holt, in Ashby *vs.* White, placed it upon the ground that it was incident to the freehold which the voter owned, or to the burgh or corporation to which he belonged; that it was a part of the constitution of England that these boroughs should elect members to serve in parliament, whether they be boroughs corporate or not corporate. In the one case the right of election is a privilege annexed to the land, and may be properly called a real
29 privilege. The second sort is where a corporation is created by charter or prescription, and the members of the corporation as such choose members to serve in parliament. The first sort have a right of choosing as a real right, but here, in this last case, it is a personal right and not a real one, and is exercised in such manner as the charter or custom prescribes; and the inheritance of this right is in the whole body politic, but the exercise and enjoyment of this right is in the particular members. (2 Lord Raymond, 950–51.) The cases relied on by the appellant have not been recognized as law in this State.

Ashby and White and Lincoln *vs.* Hapgood, 11 Mass., were reviewed and overruled in Bevard *vs.* Hoffman, 18 Md., 483. In that case this court said:

The decisions in those cases assert the principle that a party who, like the plaintiff, has been deprived of a right, is thereby injured, and must have his remedy. It seems to us that the error of the application of that principle to this case consists in misapprehension of what is the right of a citizen under our election laws.

30 In one sense, if he is a legal voter, he has the right to vote, and is injured if deprived of it; but the law has appointed a means whereby his right to vote is decided, and for that purpose has provided judges to determine that question, and has also provided the most careful guarantees for a proper discharge of duty by the judges, by the mode of their selection and their oaths of office. In all governments power and trust must be reposed somewhere: all that can be done is to define its limits, and provide means for its exercise, when the act in question is that of a judicial officer; all that the law can secure is a guarantee that they shall not with impunity do wrong wilfully, fraudulently, or corruptly. If they do so act, they are liable both civilly and criminally, but for an error of judgment they are not liable either civilly or criminally. If the citizen has had a fair and

honest exercise of judgment by a judicial officer in his case it is all the law entitles him to. "And although the judgment may be erroneous, and the party injured, it is damnum absque injuria, for which no action lies. This, in our opinion, is the most reasonable rule,
31 and it will be found supported by the weight of authority both in England and in this country." (Bevard *vs.* Hoffman, 18 Md., 483, 484.)

In the case of injury to property, however unintentional the act, the party injured has his action for damages, even in cases of extreme necessity. All perfect rights have their remedy, but imperfect rights have none.

In New Jersey, Delaware, Virginia, Florida, Louisiana, Indiana, Illinois, Arkansas, Texas, Iowa, Missouri, and Alabama, persons in the naval and military service of the United States were disqualified as voters. (Cushing's Law and Prac. of Leg. Assemblies, p. 23.) The jealousy of federal influence excluded those in actual service from participating in elections. It would be an anomaly if the foes of the government—its sworn enemies—should be preferred to its friends. If the right of suffrage is a right of property, by what authority is it taken from one class and given to another at the option of conventions of the several States? The constitution of Maryland of 1777 authorized all free men above twenty-one years having a free-
32 hold of 50 acres in the county in which they offered to vote and residing therein, and all free men having property in this State above the value of £30 currency and residing in the county, to vote. By the amendments of 1801, ch. 90, every free white male citizen above 21 years, and no other, was entitled to the right of suffrage. Thus a large class who previously enjoyed the right were disfranchised.

The appellant's position, if tenable, would render the amendment of the constitution of 1809, and all subsequent, excluding that class, inconsistent with the Constitution of the United States and void. The same power which disqualified free colored men in 1801 enabled the convention of 1864 to disqualify "all who had been in armed hostility to the United States." Much reliance was placed upon the case of Killam and Ward and Gardner's case, cited in the note. (2 Mass., 236–244.) These cases turned mainly upon the construction of an act of the State of Massachusetts entitled "An act to confiscate the estates of certain persons called absentees," who had levied war
33 or conspired to levy war, or who since April the 19th, 1775, had withdrawn without the permission of the legislature, &c., and who were declared to be aliens. The power of the legislature to pass such laws was not denied, but it was held, in Killam's case, he did not come within the intention of the law, and in Gardner's that the act pointed out the mode of prosecution, which had not been followed "modo et form." (Vide 249, 264, 266.) "Every government ought to contain in itself the means of it own preservation." (Federalist, No. 58.)

For this reason, the regulation of the right of suffrage has been reserved by the States to themselves, and was not delegated to the

general government by the federal Constitution. The qualifications of electors by that instrument are expressly confined to the qualifications requisite for electors of the most numerous branch of the State legislature. (Art. 1, sec. 2, Con. U. S.; 2d Scammon, 395, 396; Federalist, No. 52.)

It has become a political axiom that every State should control its domestic relations. The most ultra advocate of federal power would not deny this right to the States in the Union. It is, therefore, a question of the utmost consequence whether the brief prohibition, "No State shall pass any bill of attainder or ex post facto law," was designed to restrain the political power of the people over their fundamental law, or rather the civil power of the legislative branch of State governments. No other clause of the Constitution of the United States is relied on.

Bills of attainder, as they are technically called, are such special acts of legislature, as inflict capital punishments, (or pains and penalties,) upon persons supposed to be guilty of high offences, without any conviction in the ordinary course of judicial proceedings. (Story's Const., sec. 1344.)

"Ex post facto laws are technical expressions, which include every law which renders an act punishable in a manner in which it was not punishable when committed. They relate to penal and criminal proceedings which impose punishments and forfeitures, and not to civil proceedings which affect private rights retrospectively. Retrospective laws, divesting vested rights, unless 'ex post facto,' do not fall within the prohibition contained in the Constitution of the United States, however repugnant they may be to the principles of sound legislation." (1 Kent's Com's, sec. 19, p. 409, 410, and authorities there cited.)

Prohibitions on the States are not to be enlarged by construction. To do so would violate the spirit and object of the 9th and 10th amendments to the Constitution of the United States, viz: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

These were intended to prevent argumentative implications of power not delegated; to exclude any interpretation by which other powers should be assumed beyond those which are granted. The second section of art. 4 of the Constitution of the U. S. declares: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," yet it has been held, a particular and limited operation is to be given to the words "privileges and immunities"—not a full and comprehensive one. They do not mean the right of election, the right of holding offices or being elected." (Per Chase, C. J., 3 H. and McH'y, 535.)

If terms so broad and comprehensive as these are restrained by a consideration of the objects intended, technical terms are not to be

enlarged to an extent which will impair the jurisdiction of the States. It is obvious the distinctive and obnoxious feature of "ex post facto" laws is the exercise of a judicial function by the legislature, punishing thereby as crimes, acts not before forbidden, or aggravating their punishment. The object and intention of the act fixes its character. That which is preventive is not necessarily punitive, although it may be accompanied by the withdrawal of privileges previously enjoyed. The political powers of a State—its preventive means—are not to be confounded with the assumption of judicial powers by a convention or legislature. The former must exist for the safety of the State; the latter is prohibited for the protection of the citizen.

Vindictive motives are not to be imputed to the State. If they
37 existed, perversion of a power does not make it unconstitutional.

The right of suffrage being the creature of the organic law, may be modified or withdrawn by the sovereign authority which conferred it, without inflicting any punishment on those who are disqualified.

The 4th section of art. 1 of the constitution of Md. does not declare any act criminal which was not previously so, or add to, alter, or change the criminal code of the State. The acts referred to are generally such as come within the legal definition of treason, "levying war against the United States or adhering to their enemies, giving them aid and comfort." If war be levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who performed any part, however minute or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors. (4th Cranch, 126; 2d Story, Const'n, 1800.)

But these acts are not defined as crimes; they could not be
38 prosecuted as such in any court of the State, or any judgment or conviction be had under the section referred to. The actors are described by their deeds, and a civil disability imposed upon them from considerations of public policy.

The power thus conferred on the registrars by the act of assembly carrying into execution the provisions of the constitution is a police or political power, closely analogous to that previously committed to the judges of election—a power on the due exercise of which the inauguration and succession of the several departments of the government depend.

Under the old system the judges determined the qualifications of the voter at the polls; under the new the registrars ascertain and enrol beforehand those who are qualified and those who are disqualified, subject alike to liability in damages if they wilfully, corruptly, or maliciously exclude any who are entitled.

The inquisitorial and offensive manner in which these duties are said to have been in some instances discharged is a just cause for public indignation and speedy correction by the proper authority,

but not sufficient to warrant a judgment annulling the law as
39 unconstitutional.

It has been argued that, because the third and fifth sections

of art. 1 disqualify persons convicted of larceny and bribery, as voters, in addition to the penalties now or hereafter to be imposed by law, the disqualifications of the 4th section are to be regarded as "in pari materia," and penal inflictions upon the principle of "noscitur a sociis." This is not a necessary deduction. Bribery and larceny were made disqualifications by the constitution of 1851. The clauses of the constitution of 1864 are nearly recapitulations of the provisions in the former instrument referring to those crimes, except that the 5th section of the constitution of 1864 relates to 4th of July, 1851, (when the constitution of that year took effect,) and covers all cases of bribery occurring in the mean time, not altering or changing in any manner the offence or its punishment. In section 3d the disqualification is dissociated from any reference to penalty, and made the consequence of conviction, in the same connexion with lunacy, or persons non compos. In sec. 5 it is "in addition to the penalties now or hereafter to be imposed by law," a form of expression
40 not materially differing from the former, or sufficiently so to justify the conclusion contended for.

It is said the provisions of the registry law which provide the mode of appointment of the officers of registration, and authorize them to determine the qualification of voters with the test oath, are contrary to the bill of rights and the constitution of Maryland.

The first branch of this objection as to the mode of appointment was not pressed.

It is sufficient to say, there does not appear to the court any infringement in this respect of the 13th section of art. 2d of the constitution defining the appointing power of the governor, viz:

"He shall nominate, and by and with the advice and consent of the senate appoint, all civil and military officers of the State whose appointment or election is not otherwise herein provided for, unless a different mode of appointment be prescribed by the law creating the office." The act in question creating the office does prescribe a different mode of appointment. Where the office is of legislative creation the legislature can modify, control, or abolish it, and
41 within these powers is embraced the right to change the mode of appointment. (7th Md., Davis *vs.* the State, 161.)

As to the supposed conflict between the constitution of Maryland and the bill of rights, as it is called, such a collision can scarcely occur according to the accepted theory of the relation between these instruments. They are understood to be, in representative constitutional governments, parts of a whole, constituting an entirety, and to be interpreted as one instrument. The declaration of rights is an enumeration of abstract principles (or designed to be so,) and the constitution the practical application of those principles, modified by the exigencies of the time or circumstances of the country. If they differ, the constitution must be taken as a limitation of the principle previously declared, according to the subject and the language employed. (Mayor and city of Baltimore *vs.* the State, 15th Md., 459.)

The declaration of rights is a guide to the several departments of government in questions of doubt as to the meaning of the constitu-

tion, and "a guard against any extravagant or undue exten-
42 sion of power," but does not control the constitution itself when it is clear and unambiguous. As far, then, as the registration law is a legislative enactment of the 1, 2, 3, 4, and 5th sections of art. 1 of the constitution, it is not restrained by the declaration of rights, because it proceeds from the same authority, that of the convention.

The perpetual and irrevocable character of these disqualifications has been dwelt upon. We have said that such considerations are beyond our reach, but happily the duration of such clauses is more nominal than real; provisions equally perpetual in terms have passed away with the exigency that dictated them. There is a redeeming sense of justice in the people which may well be trusted to remove, in the mode prescribed by the constitution, all traces of temporary excitement which prejudice their fellow-citizens.

We are reminded of our solemn obligations to support the federal Constitution, and yet urged to come to conclusions which would pre-
vent all further deliberation and investigation in the court of
43 last resort. To adopt such a course, with our convictions, would be contrary to the best established principles and precedents.

To declare an act of a co-ordinate department of the government an unwarrantable assumption or usurpation of power because it is a violation of a constitutional prohibition, is an exercise of the judicial office of a grave and delicate nature, which never can be warranted but in a clear case. (12th G. & J., 438.)

"The presumption must always be in favor of the validity of laws, if the contrary is not clearly demonstrated." (Per Washington, Justice.)

"It must be a clear and unequivocal breach of the constitutio, not a doubtful and argumentative implication." (15th Md., 476, 477.)

These axioms were applied to acts of ordinary legislation. The ultimate object of this appeal is to annul the organic law of the State, the act of a sovereign convention, under which its present government is organized, and from which it derives its existence and au-
thority. Our province is not to make or unmake constitutions,
44 but to interpret them, not by the light of reason and common sense alone, or that higher law which has been invoked, but which has no oracle but by the text of the Constitution of the United States, as construed by its authorized expounders. If we err in our conclusions, we congratulate ourselves there is a Supreme Court erected expressly for the final adjudication of such questions, where our judgment may be reviewed and corrected, and the rights of the citizen vindicated. To this we cheerfully defer, confident that none will more cordially concur in the result.

45 THOMAS ANDERSON
vs.
JOHN W. BAKER, GEORGE ERNEST, and JULIAN MAGRUDER.

Cochran, Justice, delivered the following opinion:

The appellant, in his petition for a mandamus in this case, alleges that he is, and for many years past has been, a citizen of Maryland, residing in the fourth election district of Montgomery county; that, until now he has there possessed and exercised the right of suffrage without hindrance or question; and that he has done no act by which any of his rights as a citizen could be justly forfeited or impaired. He also alleges that, under the supposed authority of the 1st art. of the Constitution and of the act of 1865, chap. 174, the appellees were appointed to register the voters of his election district; that he duly appeared before them and demanded that he should be unconditionally registered as a legal voter, and that they refused so to do.

He then charges, in support of his alleged right to unconditional registration, that the provisions of the constitution and act above mentioned, in so far as they prescribe the oath to be administered to persons applying for registration as a condition of the right to be registered, are ex post facto laws, within the meaning of the 10th sec., art. 1, of the Federal Constitution, and therefore void.

46

This proposition, with others of a subordinate character, going to the consistency of the registration act, with the bill of rights and constitution of the State, were fully and ably discussed in the argument of the case, and it must be conceded that they present questions of the utmost delicacy and importance. Involving, as they do, the right of a considerable portion of our citizens to the continuance of a privilege heretofore enjoyed, and consequently tending to excite the public mind, it is perhaps to be regretted that their adjudication is required at a time when the judgment to be pronounced may fail to command impartial consideration. This, however, is a result with which we have nothing to do. Our duty in the premises is a plain one, and that is to declare, without fear or favor, the law as we find it.

That the question as to the conflict of the State Constitution with that of the United States, is wholly judicial in its nature, and one that this court has jurisdiction and power to decide, is scarcely the subject of a doubt. It was not contended, nor does it appear to be distinguishable in principle from the like question of repugnancy on a legislative act, which the State courts are required to hear and determine. The Constitution of the United States, as the supreme law of the land, is binding on the governmental power, as well as on the people of the several States; and the 10th sec. of art. 1, declaring that no State "shall pass any bill of attainder, ex post facto, or law impairing the obligation of contracts," is an inhibition, operating as directly and with as much force upon the original law-making power of the States residing in the people, as upon

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that power when delegated to the legislative department of a State government. In this view the State constitution, although an organic act of the people, is none the less a law within the meaning and restrictive purposes of this sec. of the Federal Constitution. To hold otherwise would be to strike down a bulwark inter
48 posed for the protection of the citizen by the supreme law of the land, and open a door to the very mischiefs it was intended to guard against and prevent.

Treating, then, the important question here presented as one properly within our jurisdiction, some of the principles recognized as elemental in our system of State governments must be taken into consideration. That the States are sovereign within the limitations imposed by the Federal Constitution, and that this sovereignty resides in the body of the people of the several States, is not denied; nor is their power to reform or abolish their existing State governments, and establish new ones, within the above-mentioned limitations, open to question. In the exercise of this power they may ordain and establish the form of government in their judgment best adapted to their wants, condition, and interests; they may prescribe the offices necessary to its administration, and declare the qualifications of the officers, as well as define the nature and extent of their authority and duty; and to the end that the government ordained may be permanent, and still
40 admit of administration with the force and according to the varying condition and sense of the people, they can provide for vacating and filling the offices, at stated intervals, by elections, and, as a necessary incident of this power, clothe the citizens or any class of them with the elective franchise. In brief, the people, in their original sovereign character, are the fountain-head of governmental authority, and all the powers necessary to be exercised in the continued administration of a representative government originate in, and are delegated by, an exertion of their sovereign will. These propositions, founded in necessity and illustrated by long-continued practice, have become the received doctrines of the American people—in fact axioms in the civil policy of the several States—and, as doctrines firmly and finally established by universal consent, they are thus generally stated that we may proceed with a more definite understanding of the nature of the rights in question. It will be necessary, however, to show that the conclusions we have reached are consistent with these fundamental principles, that a closer examination of this right should be had.

50 As we have seen, the right of suffrage is bestowed on the citizen as a necessary element in every representative government, to the end that the government ordained may be perpetual and permanent, and the purposes contemplated by its establishment more effectually accomplished. "The right of voting," says Story, in his Commentaries on the Constitution, sec. 580, "like many other rights, which, whether it has any fixed foundation in natural law or not, has always been treated in the practice of nations as a strictly civil right, derived from and regulated by each society, according to its own circumstances and interests." With us, the privilege appears

to be altogether conventional and derivative, and not original or inherent in the citizen. Prescribed by the people, in the exercise of their organic power, for the purpose of giving effect to their expressed will, it is impossible, in the nature of things, that it should exist or have an existence independent of that will. It is held to be a privilege, conferable by the people for sovereign purposes on a greater or less number of the citizens, and the power to confer it for
purposes that they may change at pleasure necessarily im-
51 plies power to withdraw or suspend it. But this is not all: the
people, in clothing a citizen with the elective franchise for the purpose of securing a consistent and perpetual administration of the government they ordain, charge him with a performance of a duty in the nature of a public trust, and in that respect constitute him a representative of the whole people. This duty requires that the privilege thus bestowed should be exercised, not exclusively for the benefit of the citizen or class of citizens possessing it, but in good faith and with an intelligent zeal for the general benefit and welfare of the State. It is on that ground that the corruption of the privilege by bribery is denounced as a crime; that adherents to a public enemy, conspirators against established authority, and felons, are held to be unfit and unsafe depositories of a privilege, the disinterested, honest, and faithful exercise of which is so vital to the preservation of public justice and tranquillity. In no case, so far as we have learned, has the right of suffrage ever been conferred on all the citizens of any State; in many of
them the qualifications prescribed for its exercise are such that
52 large numbers of the citizens are altogether excluded from its
enjoyment, while in others the privilege where once conferred has been withdrawn and bestowed on citizens not before possessed of it. By the first constitution of this State, adopted in 1776, the right of suffrage was limited to all free men, without regard to color, above the age of twenty-one years, having a freehold of fifty acres in the county of the voter's residence, and to all free men having property in the State above the value of thirty pounds current money. In 1802 a radical change was made in this provision of the organic law, by an amendment which declared "that every white male citizen of this State and no other, above the age of twenty-one years," having resided, &c., should "have a right of suffrage." It is unnecessary, however, to multiply illustrations of this exercise of the sovereign power of the States. In this particular it is sufficient for our present purpose to show, that the elective franchise, as a privilege of the citi-
zen, is a matter of which the people of the State have the
53 absolute control. That this right or power of the people of the
several States is neither abridged nor interfered with by the Constitution of the United States seems never to have been questioned, but, on the contrary, to have been affirmed by a necessary implication from the provision in the 2d sec. of art. 1, declaring that the electors of representatives in each State, "shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

To recapitulate, then, the substance of what has already been said

for the purpose of concluding on this branch of the present inquiry, I find—

1st. That the elective franchise, within the purview of this case, is a privilege conferred on the citizen by the sovereign power of the State to subserve a general public purpose, and not for private or individual advantage; that, as against the power conferring it, the citizen acquires no indefeasible right to its continuance or enjoyment, and that the people of the State, in the exercise of their sovereign power, may qualify, suspend, or entirely withdraw it from any
54 citizen, or class of them; providing always that representation of the people, the essential characteristic of a republican government, be not disregarded nor abandoned; and—

2d. That the right and power of the people to qualify, suspend, or entirely withdraw this privilege, is an inherent condition of its enjoyment impressed upon and following it from the time of its bestowal on the citizen.

Let us now examine the provisions of the State constitution, upon which the main question here is raised:

The 7th sect. of the bill of rights declares that "every free white male citizen, having the qualifications presented in the constitution, ought to have the right to vote," and the 1st, 3d, 4th, and 5th sects. of art. 1 of the constitution prescribe these qualifications.

The 1st of these sects. provides that every free white male citizen above the age of twenty-one years, who shall have resided one year in the State and six months in any county or election district of Baltimore city, and who shall comply with the provisions of this
55 act, shall have the right to vote; the 3d declares that no person, lunatic or non compos mentis, or person convicted of any infamous crime, unless pardoned by the governor, shall have the right to vote; the 4th, that no person who has been in armed hostility to the United States, or who has been in the service of the so-called Confederate States, or who has in any manner, by word, act, or deed, given them aid, comfort, or countenance, or declared his adhesion to them, or expressed a desire for their triumph, shall have the right to vote; and the 5th, that no person who, since the 4th of July, 1851, has been, or shall be, convicted in a court of law of bribery, or of resorting to force, fraud, or surprise, to corrupt or defeat the exercise of the right of suffrage, shall thereafter be entitled to vote, or hold any office of profit or trust.

To ascertain the class of persons to whom the privilege of voting is extended by these provisions, it is necessary to consider and construe them as a whole according to the ordinary meaning and sense of the terms used, and so as to effect their intended purpose. The rule of construction in such cases is well stated in Manly *vs.* State, 7th
56 Md., 135, where it was said that "Constitutions are not to be construed according to words used in particular clauses, but the whole must be considered." We find, then, by the true construction of these provisions, that the right of suffrage is bestowed upon such persons only as are within the description of the 1st sec. and not within the exceptions contained in the 3d, 4th, and 5th sects., and,

by necessary implications, that the right has been withdrawn from and denied to all persons within these exceptions, and not within the description of the 1st sect.

The question to be considered is raised upon the 4th sec., which suspends or withdraws the right or privilege of voting from a portion of the citizens for deeds done and words spoken before the constitution was adopted, and it is objected to on that ground as retrospective and ex post facto within the meaning of the sec. 10, art. 1, of the federal Constitution.

In my opinion there are two replies to this objection, either of which is conclusive. The first requires that we should ascertain the true force and meaning of the term ex post facto, as used in the
57 Constitution of the United States. We have carefully examined the cases in which this term has been considered, and its scope and purpose limited and defined. In Caldor and wife *vs.* Bull, 3d Dall., 386, where the question here was pressed upon the court, Chase, Justice, defined an ex post facto law to be—

1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal;

2d. Every law that aggravates a crime, or makes it greater than it was when committed;

3d. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed; and—

4th. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offence, in order to convict the offender. He says further that "every ex post facto law must be retrospective, but that every retrospective law is not ex post facto." In Fletcher *vs.* Peck, 6 Cranch. 138, Marshall, Ch. J., said that an ex post facto law is
58 one which renders an act punishable in a manner in which it was not punishable when committed; and Chancellor Kent, in vol. 1st of his Com., page 451, in reviewing these causes, says that the definition of an ex post facto law given in Fletcher *vs.* Peck "is distinguished for its comprehensive brevity and precision; and it extends to laws passed after the act, and affecting a person by way of punishment of that act, either in his person or estate. Ex post facto laws relate to criminal and penal proceedings, which impose punishments or forfeitures, and not to civil proceedings, which affect private rights retrospectively. Retrospective laws, and State laws divesting vested rights, unless ex post facto, or impairing the obligation of contracts, do not fall within the prohibition contained in the Constitution of the United States, however repugnant they may be to the principles of sound legislation."

59 Accepting, then, as we are bound to do, this exposition of the character and office of the term "ex post facto" as used in the federal Constitution, we have next to inquire whether the suspension of the right to vote, for the reasons stated in the 4th sec. of art. 1, is a punishment, within the meaning of that term, inflicted upon the persons whose right or privilege of voting is suspended.

To be a punishment, as contradistinguished from a mere personal inconvenience or loss of a privilege, it must be found that it was so intended; but if it be found on the other hand that the distinctive purpose of the sec. in question was altogether foreign to the criminal status of the citizen, and that the privilege of voting was qualified or withdrawn as an incident only of that purpose, then the provisions therein contained cannot be construed as penal, or be held open to any objection on that ground. In ascertaining, therefore, the purpose of the provision we shall answer the inquiry propounded here.

The sections of art. 1 to which we have referred all relate to the right of suffrage, and were intended to fix, limit, and qualify the possession and exercise of it. As a part of the constitution, they
60 vest and regulate the exerciseof a privilege essential in its nature to the permanency and consistent administration of the government it establishes; and that this privilege was dealt with in these sections with express reference to that purpose and no other, would scarcely seem to be the subject of a doubt. The end proposed by the constitution was the establishment of a new government, and the class and qualifications of the citizens, who, by the right of suffrage, were to be clothed with the power of controlling and administering it, were, as they now stand in the constitution, the first and most important of the matters for consideration. It must be presumed from the nature of the subject, that the framers of the Constitution, as well as the people who adopted it, intended, by the several provisions contained in these sections, to secure not only the stability of the government, but to guard against an inconsistent or perverted administration of it. With that view and in furtherance of that purpose, the privilege of voting was withheld from a class of citizens presumptively unfitted to exercise it. It is denied to the lu-
61 natic or person "non compos mentis," because of his incapacity to understand or perform the duties of a citizen; it is withdrawn from the person convicted of infamous crime, for want of the integrity necessary to guard against a fraudulent use or abuse of it, and from the person who has been in armed hostility to the United States, or has adhered to their enemies, on the ground of hostility to the State as an integral part of the Union. Even the 5th sect., which may be said to contemplate in some qualified sense an increase or addition to the penalties of bribery, looks more to the limitation of the privilege to proper persons than to the punishment of the offender. No such doubt arises, however, in regard to the scope and meaning of the 4th sec., which discloses a purpose so far disconnected from and foreign to the criminal status of the citizen affected as to bar any inference that punishment as such was intended.

But, as I have intimated, there is another reason why the objection made to this sec. cannot be maintained. We have found
62 that the elective franchise is conferred on the citizen by the sovereign power of the State to subserve a public general purpose; that, as against the sovereign power, the citizen acquires no indefeasible right, and that the right of the people to qualify,

suspend, or entirely withdraw the privilege is one of its inherent conditions, impressed upon and following it from the people to the citizen. If this exposition of the nature of the privilege be the true one, it is impossible for this section to be "ex post facto" or retrospective, in the strict sense of those terms. The suspension of the privilege, no matter upon what pretext, is authorized by this inherent condition, subject to which the citizen holds it; and if it can be suspended without regard to the conduct of the citizen, certainly no deed or word done or spoken by him could subject that power to any limitation or restriction.

The condition of the privilege, as between the people and the citizen, takes it altogether out of the range of ex post facto legislation; and it is not too much to add, that the constitutional inhibition against ex post facto laws, if it could be successfully invoked
63 in aid of the citizen in such a case as this, would become an instrument for converting "constitutional privilege into a vested right, as well as for disarming the people of a power essential to the safe management and control of their domestic affairs."

Upon this expression of my views I conclude that the 4th sec., art. 1, of the State constitution does not conflict with the provisions of sec. 10, art. 1, of the Constitution of the United States.

In the course of the argument other propositions were discussed, which do not appear to have been specifically presented in the appellant's petition as reasons for granting his prayer. Two of them have a material bearing upon the final disposition of the case, and for that reason should be decided here. One is, that the act of 1865, chap. 174, was not enacted in articles and sections according to the requirements of sec. 28, art. 3, of the constitution, and the other that, even if consistent with the constitution, it is still invalid, on the ground that it conflicts with the 22d and 23d sects. of the
64 declarations of rights. Neither of these propositions require an extended notice. This act is to be read in connexion with another passed at the same session, chap. 159, which provides for the incorporation of a new article in the code, under the title "Registration," and an inspection of them both has gone far to satisfy me that the requirements of the constitution have been fully complied with. But assuming, without, however, so deciding, that the act was not passed in strict conformity with those requirements, still the failure to comply with them would not be a sufficient reason for declaring the act void. Amongst other things, the 28th sec of art. 3 provides, whenever any general public law shall be passed not amendatory of any section or article of the code, "that it shall be the duty of the general assembly to enact the same in articles and sections in the same manner as the said code is arranged." This provision is plainly not mandatory, but directory, a mere instruction to the legislature as to the form in which laws should be passed, and having reference only to the public convenience. It relates altogether
65 to a matter of form and not to substance, and a failure to pursue the directions as to form would scarcely have the effect of defeating a solemn legislative act otherwise free from objection. This

section was in the constitution of 1851, and the question is not presented now for the first time. The effect upon a legislative act of not strictly complying with the requirements of another clause like in character to the one before us was considered in Davis *vs.* State, 7 Md., 159, 160; Keller *vs.* State, 11 Md., 531; and in Parkinson *vs.* State, 14 Md., 193, in all of which views were expressed confirming the conclusion stated here.

The remaining proposition presents a more complex though not more difficult question. The general assembly is required by sec. 2, art. 1, of the constitution, to provide by law for a uniform registration of voters, which registration it declares shall be evidence of their qualification to vote, reserving to the citizen, however, otherwise qualified, the right of voting until such law should be passed and carried into effect. The 4th section requires the judges of elec-
66 tion and officers of registration carefully to exclude all disqualified persons from voting and registration; it then provides for the administration by them of an oath, the form of which is therein prescribed, to persons offering to vote or presenting themselves for registration, and directs them to exclude from voting or registration, as the case may be, any person declining to take this oath. Section 41, of art. 3, also requires the general assembly "to pass laws for preserving the purity of elections by the registration of voters, and by such other means as may be deemed expedient; and to make effective the provisions of the constitution disfranchising certain persons, or disqualifying them from holding office." It is necessary in this connexion to repeat in more exact terms what has already been said in substance, and that is, that by the 1st, 3d, 4th, and 5th sections of this art., the privilege of voting is given only to white male citizens, possessed of legal capacity and above twenty-one years of age, who have resided twelve months in the State, and six months in any election district or precinct, and have not by word or deed
67 adhered to the enemies of the United States, nor been convicted of bribery or infamous crime. To the citizens so described, and to them alone, is the right of suffrage given. The privilege, however, is still further qualified, as we have seen by another limitation, and that is, that the citizens shall take the oath prescribed in the 4th sec., which further declares that the person declining to take it shall be excluded from voting, and from registration, and that registration, after a law for registration has been passed and carried into effect, shall be the evidence of the right to vote, and without which no citizen is to be allowed to vote. It is also said in this section, that taking the oath shall not be deemed conclusive evidence of the right to vote. These provisions are specific and affirmative, and their purpose is too clear, direct, and positive to admit of misapprehension or doubt. They require the general assembly to pass such laws for the registration of voters as they may deem expedient to carry into effect these disfranchising clauses; and in declaring it to be the duty of the officers of registration carefully to exclude
68 from registration all disqualified persons, they create the agency, and confer upon it exclusive jurisdiction and power to deter-

mine finally and in full all questions as to qualification and right to registration. The duty of carefully excluding all disqualified persons from registration is a special, limited, and exclusive duty, involving an exercise of judgment and discretion altogether beyond the supervisory and restraining power of any other tribunal or department of the government. Whether it was consistent with sound public policy to clothe the officers of registration with a power thus beyond judicial control is altogether foreign to the present inquiry; it is enough to find that the people have expressly conferred it by the terms of their organic law.

This view of these provisions and of the powers they confer, leads us to the question of their conflict with the declaration of rights. That instrument is to be taken as a part of the constitution. It declares, not only doctrines relating to and confirmatory of personal rights, but principles to be regarded in administering the gov-
69 ernment; like the constitution, it was the immediate work of the people, acting in their sovereign capacity, and with the constitution was intended to prescribe the form and powers of the government. Each has its office; one is general, the other is particular; and taken together, resort may be had to either to ascertain the meaning and effect of the other. That the declaration of rights furnishes a guide for the construction of ambiguous provisions of the constitution, as well as a test of the validity of laws not specifically required by the constitution and otherwise free from objection, is conceded; but if the constitution differs in any of its provisions with the general doctrines or principles set forth in the declaration of rights, such provisions are to be regarded as limitations or qualifications of those general doctrines or principles, and allowed to have effect accordingly. (Crane *vs.* Meginnis, G. & J., 476; Police Case, 15 Md., 376.) And so here, if the constitutional provisions to which we have referred are found to be inconsistent with any doctrine or principle contained in the declaration of rights, they are not to be
70 defeated and pronounced void on that ground, but taken as exceptions to or qualifications of those doctrines or principles. If, then, the provisions contained in that portion of the organic law have no effect in the way of limiting or qualifying any express provision of the constitution, it is clear that they cannot be invoked for the purpose of setting aside any portion of the act of 1865, unless, indeed, it be found that the legislature, in passing it, has exceeded the express or necessarily implied requirements of the constitution. It is insisted, however, that this was done, and the specific objections made to the act in that connexion are, that it imposes on the citizen, offering himself for registration, the duty of taking an oath to answer interrogatories by which he may criminate himself; that it allows convictions of infamous crimes to be proved, not alone by the record of the conviction, but by witnesses; and that it authorizes the disseizin of the voting privilege otherwise than by due course of law. The second of these objections seems to me to be wholly destitute of foundation. It relates to the measure of proof required by
71 the act to show the fact of conviction. According to the

established rules of evidence the record of the conviction would undoubtedly be the best, and therefore the only admissible, evidence of that fact; but it is impossible to maintain the doctrine, in cases where the purpose is not to punish an antecedent crime, that the legislature was without power to change the rule and prescribe a different one. In this case, the fact of conviction is treated by the legislature as one to be proved by witnesses, as well as by the record; and that they had the discretion and power so to treat it, I do not entertain a doubt. The soundness of the other objections must be tested by the express and necessarily implied requirements of the constitution in regard to registration.

The officers of registration are directed by the 4th sec. of art. 1 to "carefully exclude from registration all disqualified persons," and, to secure a uniform performance of that duty, it was absolutely necessary to fix and prescribe the mode by which they should be able to investigate and decide upon each case. The same sec. also required an oath to be administered, the taking of which it de-
72 clares was "not to be deemed conclusive evidence of the right to vote," thereby necessarily implying power and duty, in the officers of registration to make further examination. To meet and satisfy this plain requirement of the constitution, the act of 1865 was so framed as to authorize the administration of a further oath to answer such questions as the officers of registration should propound. The mode of further examination, thus prescribed, is not only a compliance with a well-defined requirement of the constitution, but it is strictly consistent with the nature of the duty which it declares the officers of registration should perform. No citizen is compelled to undergo the examination thus proposed; the administration of the oath is made a condition of his right to registration, and, by the constitution, he could not acquire the right to be registered as a voter even if then without subjecting himself to this condition. If crimination, either as to crime or disloyalty, be the result of answering questions touching the right to registration, it is clear that in such cases the right to vote is denied by the constitution, and that
73 no wrong is done by the provisions of the act. But this is not all. The proposition in the bill of rights by which this objection was sought to be supported, is "that no man ought to be compelled to give evidence against himself in a criminal case." The proceedings authorized by the registration act are not criminal in their nature or purpose. The citizen is not arraigned nor called to answer, except at his own election, and then only to enable the officers of registration to ascertain whether he has the qualifications made necessary by the constitution to his registration as a legal voter. The oath provided for here, certainly does not fall within the inhibition of the bill of rights, whether required by the constitution or not. The answer to the remaining objections has already been substantially presented. Assuming that the privilege of voting was contemplated by the 23 sec. of the declaration of rights, as one of which the citizen should not be disseized otherwise than by due course of law, still we have found that the constitution provided for ascer-

taining by a registration of the voters to whom the privilege of voting was extended, and that it clothed the officers charged with
74 this duty, to the exclusion of courts and juries, with full power and jurisdiction to hear and finally determine all questions as to the right of voting and registration. To this extent, and that is as far as the objection can go here, the voting privilege was withdrawn or excepted from the operation and protection of this sec. of the declaration of rights by the express provisions of the constitution.

This seems to me to be a sufficient review of the material questions raised upon this record, and for the reasons here stated, I conclude, without further comment, that the order of the court below should be affirmed with costs to the appellees.

75 THOMAS ANDERSON,
vs.
JOHN W. BAKER, GEORGE ERNEST and JULIAN MAGRUDER.

Justice Weisel delivered the following opinion:

The appeal in this case is from an order of the circuit court for Montgomery county dismissing the petition of the appellant for the writ of mandamus, which he prayed might be directed to the appellees, officers of registration of voters for the fourth election district of said county, commanding them to register his name on the column of legal voters in said district and county.

The petition seemingly expresses doubts about the adoption of the constitution of Maryland of 1864. but as the petitioner sought the interference of the court below in order to afford him the benefit of a law passed under its authority, we may presume that he did not seriously question its existence as the organic law of Maryland.

Such a question could not now be raised or entertained. The
76 adoption and valid existence of the present constitution of Maryland are settled beyond inquiry, and were so treated in the argument.

Nor is it pretended, upon this application, that the law of 1865, ch. 174, for the registration of the voters of the State, is wholly void, as being in conflict with the Constitution of the United States or the constitution of Maryland. If void in toto, the appellees would have no authority to register any vote, and the court could not be invoked to order an illegal act. The petitioner in that case would be insisting upon an act to be done under a void law. So much, therefore, of the argument which was directed against the law, on the ground that it was not enacted in articles and sections as the code is arranged, (Constitution, art. 3, sec. 28,) and for that reason it should be regarded as void, does not belong to this case, and was not prompted by anything contained in the petition of the appellant for the writ of mandamus.

77 The petitioner claimed to have his name registered in the column of qualified voters, without taking the oath prescribed by said law, or being further subjected to examination under oath touching his qualifications and right to vote. These requirements of

the law he denounced in the paper which he presented as containing his reasons for refusing to take said oath as despotic, as usurpations, as unwarranted by the principles of free government, and as in conflict with the letter and spirit of the federal Constitution in certain of its provisions. He refused to comply with these requirements. The answers of the appellees also state the same fact of refusal.

The petitioner, therefore, while he admits in the general the validity of the registration act, and seeks to register under it, alleges the unconstitutionality of so much of the first article of the constitution of Maryland, and the provisions of said act of assembly agreeing therewith, as require the officers of registration to exact the oath and to institute the examination aforesaid, he avowing that he is a white male citizen of the United States, above the age of 21
78 years, having the required residence, and as having heretofore without hindrance exercised the right of suffrage, which he has done nothing to forfeit or impair.

It is conceded that if there is anything in the registration law of 1865, or of the constitution of Maryland authorizing its passage, violative of any provision of the Constitution of the United States, or in conflict with any of its prohibitions upon the States, such parts of the law and constitution are void and of no effect, the Constitution of the United States being the supreme law of the land, and binding upon conventions and people in forming and adopting State constitutions as well as upon the legislatures of the States in the enactment of laws. If there is, therefore, any portion of the constitution of this State, or of the registration law passed at the last session of its legislature, clearly obnoxious to the objection that it is in conflict with that instrument, it is the duty of this court so to declare and adjudge. The duty is one of the gravest importance, and therefore should be approached
79 and performed with the greatest deliberation and care. The people can be engaged in no act more important to their temporal welfare than in the framing of their organic law. It is the depository of the sovereign will, declaring and defining the rights of the citizen, distributing and limiting the power of government, and so adjusting them as to be in harmony with the national will as contained in the Constitution of the United States, and their own declared bill of rights.

The will of the people thus expressed, and constituting the groundwork of all State legislation and the protection of individual rights, is entitled to the gravest consideration and respect; and when the judicial mind is brought to act upon it, even in the construction of doubtful phraseology, a degree of anxiety is felt that is not usual in the investigation of mere legal difficulties. How much more concern must it experience when the question is one of alleged conflict with the federal Constitution? And hence the principle that in doubtful cases of alleged conflict courts will support the law or the constitution that is assailed, leaving it to the supreme judicial tribunal of
80 the Union to determine the question in the last resort.

For a more distinct understanding of the questions as they arise in the case before the court, it may be premised that the con-

stitution of this State, framed and adopted in 1864, provides that the general assembly should pass a law for a uniform registration of the names of voters in this State, which registration should be evidence of the qualification of said voters to vote at any election thereafter held, (art. 1, sec. 2;) qualifications and disqualifications of voters are prescribed, and it is declared to be the duty of all officers of registration carefully to exclude from voting or being registered all persons so disqualified, and it is made their duty to allow no person to be registered until he shall have taken the oath or affirmation set out and prescribed in such case to be taken; the taking of such oath, however, should not be deemed conclusive evidence of the right of the person so taking it to vote, (art. 1, sec. 4.) It further provides that the general assembly shall pass laws for the preservation of the
81 purity of elections by the registration of voters, and by such other means as may be deemed expedient, and to make effective the provisions of the constitution disfranchising certain persons, (art. 3, sec. 41.)

The legislature, at the session of January, 1865, passed an act relating to the registration of the voters of the State. (Ch. 174.) The 5th section of this law enacts that the officers of registration, after recording the surname and Christian name of every person described in said section, "shall administer to such person the oath of allegiance as prescribed by the fourth section of article first of the constitution, and the further oath that he will make true answers to such questions as they may propound to him touching his right to registration and voting, and enter in the proper column the fact whether such person has or has not been sworn." Sec. 6 provides, "that it shall be the duty of the officers of registration, before entering any name on the register of voters, to diligently inquire and ascertain that such person has not done any of the acts which
82 are declared in the third, fourth, and fifth sections of the said first article of the constitution as causes of disqualification, and if the evidence brought to their knowledge shall satisfy them that he is disqualified under either of said sections, they shall not enter his name as a voter in said eighth column or register of qualified voters, but shall carefully exclude it therefrom, notwithstanding he may have taken the oath of allegiance prescribed in section four of said first article of the constitution."

And by section 8 they are required to enter in the said register of qualified voters the name of every person who shall apply to them to be registered and who shall satisfy them that he is qualified to vote under the provisions of the first article of the constitution and the laws of the State.

These are the material provisions of the law which we are called to pass upon in connexion with the fourth section of the first article of the constitution.

That section contains or specifies certain disqualifications from voting and prescribes the oath of allegiance which the applicant for
83 registration must take before his name can be registered as a qualified voter, and which if he declines to take he shall not

be allowed to vote, nor will the taking of the oath absolutely and conclusively entitle him to vote. The law in the sections referred to purports to be in conformity with these provisions of the State constitution, and this was not denied in the argument, except in the particular that the law in section 5 required a further oath to make true answers to such questions as might be propounded touching the right to registration and voting. It was contended that this further oath was not required by the State constitution, and was therefore unauthorized and illegal.

The petitioner declined or refused to take these oaths, when he applied for registration, but demanded that his name should be registered as a qualified voter, notwithstanding such refusal and seeks to support such claim or demand and justify such refusal on the ground that these provisions, both of the law and the Constitution, are in conflict with the clause of the 10th sec. of the first article of the Constitution of the United States, which prohibits any State from
84 passing any bill of attainder or ex post facto law; and that they also are repugnant to various articles of the bill of rights; and consequently inoperative and void.

These are the questions which the court is called upon to consider and determine, and they at once present the inquiry as to the origin and nature of the elective franchise, as understood in American constitutional law, and the power of the States in their sovereign capacity, when forming or amending their State constitutions, to restrict or enlarge it, according to their sovereign will and the exigencies of the public safety.

The right of suffrage is not an original, indefeasible right, even in the most free of republican governments; but every civilized society has uniformly fixed, modified, and regulated it for itself, according to its own free will and pleasure. And in these United States every constitution of government has assumed, as a fundamental principle, the right of the people of a State to alter, abolish, and modify the form of its own government according to the sovereign pleasure of the people. The right to vote, like the right to hold office, being thus conferred
85 upon the voter by the sovereign will of the people in their organic law or constitution of government, the question upon whom it ought to be conferred, and what should constitute its boundaries and limits—in other words, what should qualify and what should disqualify—is one which the people themselves are to settle; so various are the circumstances, habits, wants, character, conditions, pursuits, dangers and difficulties of different people, that no fixed or certain rule can be laid down by which the right of suffrage can be imparted. No one has yet ever pretended that the right should be universal, in the most enlarged or extended sense of that term, so as to embrace every age, sex, character and condition. In every State in the American Union females are excluded from voting and holding office, though taxable citizens, and represented in legislative bodies; so with regard to minors, though they, of the male sex, in addition to being taxed if owners of property and represented, are also required to bear arms when of the required military age and

bodily constitution. In most of the States Africans are excluded, though they may be taxed and under certain circumstances
86 of age, sex, &c., required to do military duty. And even in the qualified class exceptions are made; in other words, disqualifications imposed. If, for instance, all free white male persons over twenty-one years of age be qualified to vote under a general provision, exceptions can be made and generally are made so as to exclude from the qualified class those who are alions, idiots, insane, paupers, &c., or those who may have been convicted of crime, or those who may have by any means rendered themselves dangerous depositories of such a privilege. All these regulations and limitations are in my judgment clearly acts of sovereign power, to be exercised or not; and if exercised, to such degree or extent as the sovereign power shall determine. The common good of the whole is the end proposed by every well-organized society; and if a restriction of the right of suffrage be deemed necessary or expedient by the sovereign power to attain this end, under the circumstances in which the public interest are placed, there can be no valid objection so to exercise this authority. A liberal exercise of the power may at one stage in the history of a people be proper and judicious, whilst at another
87 a more restrictive policy may be demanded; and what one people may regard as assential, another at the same time and under similar circumstances may consider injurious or prejudicial, and therefore may make different provisions to avoid the danger. These principles and views Justice Story deduces from all the leading authorities upon this subject—the best writers upon national and constitutional law, both of our own country and those countries in Europe in which liberal institutions have in any form or at any time existed. (1 Story on the Constitution, sec. 577 to 584.)

That the right of suffrage is a very important privilege and cannot be too highly estimated no one will deny, and that it should be distinctly defined and strictly guarded is as readily conceded. The free exercise of the right by those intrusted with it, and the purity of elections, are fundamental principles of free government.

In our system of government the power to prescribe the qualification of the voter resides with each State of the Union. The
88 Constitution of the United States does not only not restrict this right, but expressly concedes it to the States, and, further than this, intrusts to them "the very important power of ascertaining and directing the qualifications of those who shall be entitled to elect the most numerous branch of the national legislature." (2 Wils. Lectures, 131.) For by the Constitution of the United States (art. 1, sec. 2,) the members of the House of Representatives shall be chosen "by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." The same rule applies to the election of presidential electors, when that body is made elective. The Constitution of the United States does not adopt this rule because of any supposed or prescribed uniformity, but in the very face of a conceded and ofttimes very material diversity.

The election of these representatives to Congress, says Mr. Madison, (Federalist, No. 54,) "is to be exercised by such part of the inhabitants as the State itself may designate." He adds, "the qualifications on which the right of suffrage depends are not, perhaps,
89 the same in any two States. In some of the States the difference is very material. In every State a certain proportion of inhabitants are deprived of this right by the constitution of the State who will be included in the census by which the federal Constitution apportions the representatives," &c. How large this proportion thus deprived of the right is can be estimated by adding to the female portion (always or generally equal to one-half of the entire population of a State) others who are disqualified as minors, insane, aliens, without residence, &c., &c. The voting population of a State is not only largely less than one-half of its entire population, but varies in numbers according to the disqualifications which each State imposes. (1 Story on the Con., sec. 580, 582.) These differences all arise from the sovereign pleasure of each State, generously confided in by the government of the United States, inasmuch as in this particular she rests herself, as has been well said, on the governments of the several States, her own protection as a republican form of government being in the 4th section of the 4th article of the federal Con-
90 stitution, which provides that "the United States shall guarantee to every State in this Union a republican form of government." Her own existence as a government of this form or character, therefore, depends on those of the States. (2 Wils. Lect., 131, 132.) The right of suffrage should be defined and its limitations expressed in the constitution. This is justly regarded, says Mr. Madison, as a fundamental article of republican government. (Federalist, No. 52.) It peculiarly and properly belongs to the sovereign power of a State to declare and define it. The constitution of a State is the work of the people of that State. It differs from an ordinary act of legislation in this, that the latter is the act of a representative body created by the constitution itself, and acting within the limits prescribed to or the powers conferred upon it by that instrument.

The constitution of Maryland of 1864 was framed and adopted whilst a most gigantic rebellion existed, and had been waged for three and a half years against the authority and government of the
91 United States. The struggle by the insurgents was to sever and dissolve the Union of the States; that of the government of the United States to maintain and preserve it. Maryland occupied the position of a State on the line separating the contending parties; her people divided in sentiment and action, a considerable portion having left her soil and joined themselves to the cause of the rebellion; her own territory had been thrice invaded by the insurgent armies in great force, her citizens despoiled of their goods, her fields devastated and crimsoned by the blood of battles, and the relation of the State to the Union, the very palladium of her security and liberties, threatened and endangered. How far those of her people who united in this effort to destroy the Union, and assisted in bringing the war, in all its horrors, within her borders, and those of them who

aided and abetted the rebellion or desired success to its arms, were to be deemed safe depositories of the right of suffrage, was a matter for the judgment and determination of the convention of the people of the State which assembled to revise, amend, and alter the
92 constitution of the State, and for the people themselves when called upon to adopt the instrument itself thus prepared and submitted by the convention. What was done by the convention and people in this respect is made a matter of grave charge and complaint, and is arraigned as in conflict with the Constitution of the United States, and the inalienable rights of freemen.

Whether this be so or not has been very fully and ably argued by counsel, and carefully and dispassionately considered by the court.

The bill of rights (7th article) provides "that every free white male citizen, having the qualifications prescribed by the constitution, ought to have the right of suffrage." This is identical with the provision in the declaration of rights in the constitution of 1851, (art. 5.)

It will scarcely be contended that the clause having the qualifications, &c., does not embrace those who are not subject to the disqualifications prescribed by the constitution. Not to be dis-
93 qualified is to be qualified. The qualification of a voter is to be determined not simply by what may be affirmatively expressed in the instrument conferring the privilege, but also by what may be negatively declared. One may be qualified by the terms of a general rule, and yet disqualified by the exceptions to the rule. This is too plain for further elucidation.

The 1st sec. of the first article of the constitution affirmatively prescribes the qualifications of voters: "Every white male citizen of the United States of the age of twenty-one years or upwards, who shall have resided in the State one year next preceding the election, and six months in any county, or in any legislative district of Baltimore city, and who shall comply with the provisions of this article of the constitution, shall be entitled to vote at all elections hereafter held in this State." This is the general rule.

All not within the terms of the foregoing description are therefore disqualified. They exclude a very large portion, more than one-half, of the community—namely, all females; all persons of
94 African blood; all aliens, and persons not naturalized; all white male persons under 21 years of age; all white male citizens who have not resided in the State one year next preceding the election, and six months in the county, or in any legislative district in Baltimore, and all white male citizens of 21 years or upwards, &c., who will not comply with the provisions of this first article of the constitution. These are most generally the persons disqualified by every other constitution in the Union.

The constitution, however, does not stop with the 1st sec. It proceeds to make certain exceptions also from those who fall within the limits of qualified voters in the first section. By the 3d section, persons above 21 years, convicted thereafter of larceny or other infamous crimes, and not pardoned, and persons lunatic or non compos mentis, shall not be entitled to vote. By the 4th sec., persons who

have been at any time in armed hostility to the United States or the lawful authorities thereof, or who have done any of the disloyal acts, or made the declaration, or expressed the disloyal desire
95 therein specified, shall not enjoy the right of suffrage, unless the disability be removed in the manner therein provided. The 5th section refuses the right to vote to any person convicted of certain acts of bribery or corruption set forth in the section. These disqualifications constitute the exceptions to the general rule of qualification in the 1st section.

The 4th sec. also prescribes an oath to voters, to be administered at the first election under the constitution to any person offering to vote; and at any subsequent election the same oath may be administered. This oath is in these words: "I do swear or affirm that I am a citizen of the United States, that I have never given any aid, countenance or support to those in armed hostility to the United States, that I have never expressed a desire for the triumph of said enemies over the arms of the United States, and that I will bear true faith and allegiance to the United States, and support the Constitution and laws thereof as the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding; that I will
96 in all respects demean myself as a loyal citizen of the United States, and I make this oath or affirmation without any reservation or evasion, and believe it to be binding on me."

Any person declining to take this oath shall not be allowed to vote, but (it is declared) the taking of such oath shall not be deemed conclusive evidence of the right of such person to vote; and that it shall be the duty of all officers of registration and judges of election carefully to exclude from voting, or being registered, all persons so as above disqualified.

Such are the provisions of the constitution in relation to the qualifications and disqualifications of voters, and the mode of ascertaining the status of him who offers to vote. For the purpose of this ascertainment, however, the constitution further provides that the general assembly shall provide by law for a uniform registration of the names of the voters in this State, which registration shall be evidence of the qualification of said voters to vote at any election thereafter held, and after said law shall have been passed and
97 carried into effect, no person shall vote unless his name appears on the register. (Art. 1, sec. 2.) It is the declared duty of all officers of registration carefully to exclude from voting, or being registered, all persons disqualified; and they are to allow no person to be registered until he shall have taken the oath or affirmation set out in the fourth section of said article. (Art. 1, sec. 4.) And the 41 sec. of art. 3 provides that the general assembly shall pass laws for the preservation of the purity of elections by the registration of voters, and by such other means as may be deemed expedient, and to make effective the provisions of the constitution disfranchising certain persons, or disqualifying them from holding office.

With a view to carry out these constitutional provisions, the general assembly, at its session in January, 1865, passed the law for the

registration of the voters of the State. No objection has been made to the law as not being compatible with the foregoing provisions of the State constitution, except in the one particular that the law
98 requires in sec. 5 the officers of registration to administer to the applicant for registration "the further oath that he will make true answers to such questions as they may propound to him touching his right to registration and voting." It was insisted in the argument that such further oath is not required by the constitution, and that therefore the registration law, so far as this further oath and the examination of applicants upon interrogatories propounded to them are concerned, is unauthorized and void.

It is true the constitution of the State does not, in express terms, authorize such further oath to be administered to the applicant. But it does expressly require all officers of registration and judges of election carefully to exclude from voting or being registered all persons disqualified; and the judges of election at the first election were enjoined to administer to any person offering to vote the oath or affirmation set out in terms in the 4th section of the 1st article; and then provides that the taking of such oath shall not be deemed conclusive evidence of the right of such person to vote. The 41st sec.
99 of the 3d article authorizes the legislature to pass laws for the purity of elections by the registration of voters, and by such other means as may be deemed expedient, and to make effective the provisions of the constitution disfranchising certain persons.

Taking these provisions of the constitution together, and looking at the object and purpose of the constitution designed by them, the inconclusiveness of the oath is as apparent in the case of registration as in the case of elections prior to the passage of a registration law. If in the one case it shall not be deemed conclusive, but a further examination may be gone into, so in the other, when the evidence of qualification of the voter is to be placed in a more permanent form, and after a fuller and more careful examination, and to make the provisions of the constitution disfranchising certain persons effective, it can be perceived on what ground or for what reason the oath itself should be deemed conclusive.

The 4th sec. of the 1st article impliedly confers the power; but, taken in connexion with the 41st sec. of the 3d article, I con-
100 sider the power of the legislature to authorize such further oath to be administered and the consequent personal examination of the applicant himself touching his right to registration and voting, to be full. It was competent for the legislature, in making effective these provisions of the constitution, to require such further oath and examination.

I proceed now to the other and main inquiry arising under the petition, and urged with great force in the argument, whether the fourth section of article 1st of the constitution and the registration law carrying out its provisions are in conflict with the 10th sec. of the Constitution of the United States, which prohibits any State from passing any bill of attainder or ex post facto law.

Bills of attainder, which include bills of pains and penalties, are

prohibited as well by the constitution of Maryland (18th article of decl. of rights) as by the Constitution of the United States. They are special acts of the legislature inflicting capital or other punishments upon persons supposed to be guilty of an offence without any conviction in the ordinary course of judicial proceedings. In
101 such cases the legislature assumes judicial magistracy, pronouncing upon the guilt of the party without any of the common forms and guards of trial, and satisfying itself with proofs when within its reach, whether conformable to the rules of evidence or not. (2 Story on the Constitution, sec. 1344.) Of the same class are ex post facto laws. They are also prohibited by the constitution of Maryland, (art. 17, decl. of rights.) "This phrase applies to acts of criminal nature only, and the prohibition reaches every law whereby an act is declared a crime, and made punishable as such, when it was not a crime when done; or whereby the act, if a crime, is aggravated in enormity or punishment; or whereby different or less evidence is required to convict an offender than was required when the act was committed." "An ex post facto law is one which renders an act punishable in a manner in which it was not punishable when it was committed." (2 Story on the Const., 1345; 3 Dall., 386; Calder *vs.* Bull, 6 Cranch, 138; Fletcher *vs.* Peck, same case, 2 Pet. Cond. R., 308.)

102 These enactments are for the personal security and the protection of the private rights of the citizen, and are great constitutional bulwarks. which are not to be violated. They differ only in this, that in the one case, that of a bill of attainder, the legislature becomes the judge and pronounces the guilt of and the punishment upon the offender; whilst in the other, the prior act is declared a crime, or aggravated in its enormity or punishment, or a different or less evidence prescribed for a conviction, leaving the trial with the judicial tribunals of the State. It has been well settled that an ex post facto law is not applicable to civil laws, but to penal and criminal laws only. Retrospective laws generally, such as may divest antecedent vested rights of property, are not prohibited by the Constitution of the United States, but only such as are technically ex post facto; namely, such as relate to criminal matters only. 8 Pet., 110; Watson *vs.* Mercer.

It was gravely urged in the argument, and in support of this petition, that the acts of disqualification in the 4th sec. of the 1st article of the constitution of Maryland, and as a consequence so much
103 of the registration law as conforms to the provisions of this section, fall within this prohibition of the Constitution of the United States, and these received definitions and construction of the terms used.

That the 4th section does not meet the definition of a bill of attainder is very manifest. It sits in judgment on no particular person or persons for acts done, pronouncing them crimes, applying its own rule of evidence, and inflicting punishment. Nor does it, by way of an ex post facto law, declare certain acts already done as crimes which were not so before, and hand over the offenders to the public crimi-

nal tribunals for trial, conviction, and punishment. But it was assumed and insisted on in the argument that although these technical peculiarities did not appertain to the section, yet the disqualifications it imposed were a punishment for acts declared unlawful, and that this fixed upon it the character of an ex post facto law. But the section in no part of it declares these acts as crimes against the
104 State, and directs those who had committed them to be tried, and upon conviction adjudged to forfeit their right of suffrage. The mere use of the term unlawful as applied to these acts of disqualification, or the provision for restoring the person disfranchised to his full rights of citizenship by an act of the legislature, are not to be construed to have the force and effect of enacting these disqualifying acts and words into crimes against the State, to be inquired into and punished by the loss of the offender's right of suffrage or holding office. These acts are described as unlawful, because unlawful in their very nature, and as contrary to the laws of the United States, to which allegiance is a paramount duty and so declared by the 5th article of the decl. of rights. To call them unlawful was merely to designate them by the name and character they bore already. The denial of the right of suffrage to such as may have engaged in them is simply a denial of a privilege to those who, because of their unlawful relations to the United States, were considered not proper and safe subjects for its enjoyment. The denial of the
105 right to those who are excluded by the first section, viz., to females, Africans, aliens, minors, &c., is not by way of punishment, nor to a lunatic or person non compos mentis, in the 3d section. And so the denial of the right to those enumerated as disqualified in the 4th sec. cannot, with any greater propriety, be regarded as a punishment. If the constitution had prohibited paupers or confirmed inebriates from voting, though they had enjoyed the right before, would such exclusion be regarded as a punishment for past offences? The negro, holding a certain amount of property, once voted in Maryland. He was deprived of the right by a subsequent change of the constitution. Was that act of the sovereign will ever regarded as an ex post facto law? Or, suppose the people of Maryland, in reforming their constitution, had for reasons of policy chosen to withhold the right from any soldier, seaman, or non-commissioned or commissioned officer in the service of the United States, as many of the constitutions of the States in the Union do, would this be re-
106 garded as in contravention of their rights under the Constitution of the United States, and a punishment for crime committed? If so, all changes of the organic law restrictive of the right or conferring it upon conditions which did not exist before, would be regarded as conflicting with the Constitution of the United States and void. A disqualification to vote or hold office for such cause as the popular will may declare prejudicial to the public safety, or inconsistent with sound policy, the exclusion of a class regarded as inimical to the public welfare and interests, is not by way of punishment to the individuals affected, but as a protection to the body politic. All that can be said in such cases is, that the right is not con-

prohibited as well by the constitution of Maryland (18th article of decl. of rights) as by the Constitution of the United States. They are special acts of the legislature inflicting capital or other punishments upon persons supposed to be guilty of an offence without any conviction in the ordinary course of judicial proceedings. In
101 such cases the legislature assumes judicial magistracy, pronouncing upon the guilt of the party without any of the common forms and guards of trial, and satisfying itself with proofs when within its reach, whether conformable to the rules of evidence or not. (2 Story on the Constitution, sec. 1344.) Of the same class are ex post facto laws. They are also prohibited by the constitution of Maryland, (art. 17, decl. of rights.) "This phrase applies to acts of criminal nature only, and the prohibition reaches every law whereby an act is declared a crime, and made punishable as such, when it was not a crime when done; or whereby the act, if a crime, is aggravated in enormity or punishment; or whereby different or less evidence is required to convict an offender than was required when the act was committed." "An ex post facto law is one which renders an act punishable in a manner in which it was not punishable when it was committed." (2 Story on the Const., 1345; 3 Dall., 386; Calder *vs.* Bull, 6 Cranch, 138; Fletcher *vs.* Peck, same case, 2 Pet. Cond. R., 308.)

102 These enactments are for the personal security and the protection of the private rights of the citizen, and are great constitutional bulwarks. which are not to be violated. They differ only in this, that in the one case, that of a bill of attainder, the legislature becomes the judge and pronounces the guilt of and the punishment upon the offender; whilst in the other, the prior act is declared a crime, or aggravated in its enormity or punishment, or a different or less evidence prescribed for a conviction, leaving the trial with the judicial tribunals of the State. It has been well settled that an ex post facto law is not applicable to civil laws, but to penal and criminal laws only. Retrospective laws generally, such as may divest antecedent vested rights of property, are not prohibited by the Constitution of the United States, but only such as are technically ex post facto; namely, such as relate to criminal matters only. 8 Pet., 110; Watson *vs.* Mercer.

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That the 4th section does not meet the definition of a bill of attainder is very manifest. It sits in judgment on no particular person or persons for acts done, pronouncing them crimes, applying its own rule of evidence, and inflicting punishment. Nor does it, by way of an ex post facto law, declare certain acts already done as crimes which were not so before, and hand over the offenders to the public crimi-

nal tribunals for trial, conviction, and punishment. But it was assumed and insisted on in the argument that although these technical peculiarities did not appertain to the section, yet the disqualifications it imposed were a punishment for acts declared unlawful, and that this fixed upon it the character of an ex post facto law. But the section in no part of it declares these acts as crimes against the
104 State, and directs those who had committed them to be tried, and upon conviction adjudged to forfeit their right of suffrage. The mere use of the term unlawful as applied to these acts of disqualification, or the provision for restoring the person disfranchised to his full rights of citizenship by an act of the legislature, are not to be construed to have the force and effect of enacting these disqualifying acts and words into crimes against the State, to be inquired into and punished by the loss of the offender's right of suffrage or holding office. These acts are described as unlawful, because unlawful in their very nature, and as contrary to the laws of the United States, to which allegiance is a paramount duty and so declared by the 5th article of the decl. of rights. To call them unlawful was merely to designate them by the name and character they bore already. The denial of the right of suffrage to such as may have engaged in them is simply a denial of a privilege to those who, because of their unlawful relations to the United States, were considered not proper and safe subjects for its enjoyment. The denial of the
105 right to those who are excluded by the first section, viz., to females, Africans, aliens, minors, &c., is not by way of punishment, nor to a lunatic or person non compos mentis, in the 3d section. And so the denial of the right to those enumerated as disqualified in the 4th sec. cannot, with any greater propriety, be regarded as a punishment. If the constitution had prohibited paupers or confirmed inebriates from voting, though they had enjoyed the right before, would such exclusion be regarded as a punishment for past offences? The negro, holding a certain amount of property, once voted in Maryland. He was deprived of the right by a subsequent change of the constitution. Was that act of the sovereign will ever regarded as an ex post facto law? Or, suppose the people of Maryland, in reforming their constitution, had for reasons of policy chosen to withhold the right from any soldier, seaman, or non-commissioned or commissioned officer in the service of the United States, as many of the constitutions of the States in the Union do, would this be re-
106 garded as in contravention of their rights under the Constitution of the United States, and a punishment for crime committed? If so, all changes of the organic law restrictive of the right or conferring it upon conditions which did not exist before, would be regarded as conflicting with the Constitution of the United States and void. A disqualification to vote or hold office for such cause as the popular will may declare prejudicial to the public safety, or inconsistent with sound policy, the exclusion of a class regarded as inimical to the public welfare and interests, is not by way of punishment to the individuals affected, but as a protection to the body politic. All that can be said in such cases is, that the right is not con-

ferred, for reasons of public policy deemed expedient by the constitution-making power—the people of the State in convention assembled.

The deprivation of the right to vote or hold office may become a penalty or punishment for crime, as in a case where the right has been conferred by the constitution, and the constitution also
107 provides that upon conviction for crime, the party privileged shall thereafter be deprived of it. Such is the provision in the first clause of the 3d section, in cases of conviction for larceny or other infamous crimes; and also the provisions in the 5th sec., against bribery. By these, in addition to the other punishments prescribed by law for the offences, the party convicted shall also be disqualified from thereafter voting or holding office. In these cases the right is subject to forfeiture, after having been conferred. But if the constitution had provided that all persons who had previously been convicted of crime should not be entitled to vote, this would simply be a disqualification and not an additional punishment. Of this latter class is the provision in the constitution of Virginia, which is in these words: "And no person shall have the right to vote who is of unsound mind, or a pauper, or a non-commissioned officer, soldier, seaman, or marine in the service of the United States, or who has been convicted of bribery in an election, or of any infamous offence." (Constitution of Virginia of 1850–'51, art. 3, sec. 1.) This is clearly a disqualification, not a punishment. It is found in an article
108 entitled "Qualification of voters," and in a section which contains both the qualifying description and the disqualifying exceptions.

If I am right in these positions, then all the argument which has been addressed to the court in relation to the deprivation of rights or punishment of offences, by the 4th sec. of the 1st art. of the constitution and the registry law made in pursuance of it, as being without due process of law, falls to the ground.

The right to vote being conferred upon those qualified by the constitution, or not subject to its disqualifications, is vested only during the continuance of the popular will. A person entitled to vote and voting during one constitutional period, may fall within a class disqualified, for public reasons, during another period of constitutional change. And so a class disqualified at one time may be deemed worthy of the right or privilege at another. When the right is conferred and its exercise enjoyed under an existing constitution, the citizen invested with it cannot forfeit it criminaliter without due process of law, nor can its exercise be improperly interfered with
109 without a legal remedy and redress. This court has properly laid down the law in this respect in the recent case of Bevard *vs.* Hoffman and others, 18 Md., 483, 484. That was an action brought against the judges of election in the 8th election district of Carroll county to recover damages for their refusal to permit the plaintiff to vote at the presidential election of 1856.

It was argued in that case on behalf of the plaintiff, that the action lay as well where the citizen was deprived of his vote by the mistaken

judgment of the judges of election, as where he was deprived of it by their wilful, corrupt, or malicious action; and that the absence of fraud, corruption, or malice in the judges could only be urged in mitigation of damages; and that this view of the law was best calculated to secure to the citizen the exercise of the invaluable right of suffrage, and at the same time to relieve from unnecessary damages those appointed to preside at elections, who may reject a qualified voter from an honest mistake; and for this several authorities were cited both in England and the United States. But the court (his honor,
110 Judge Bartol, pronouncing the opinion) did not adopt this view, and considered the strongest of the cases cited as not supporting it. "The decisions in these cases (say the court) assert the principle, that a party who, like the plaintiff, has been deprived of a right, is thereby injured and must have his remedy. It seems to us that the error of the application of that principle in this case consists in a misapprehension of what is the right of a citizen under our election laws. In one sense, if he is a legal voter he has the right to vote, and is injured if he is deprived of it; but the law has appointed a means whereby his right to vote is decided, and for that purpose has provided judges to determine that question, and has also provided the most careful guarantees for a proper discharge of duty by the judges, by the mode of their selection, and their oaths of office. In all governments power and trust must be reposed somewhere; all that can be done is to define its limits, and provide means for its proper exercise. When the act in question is that of a judicial officer, all that the law can secure is a guarantee that they
111 shall not with impunity do wrong wilfully, fraudulently, or corruptly. If they do so act, they are liable both civilly and criminally; but for an error of judgment they are not liable either civilly or criminally. If the citizen has had a fair and honest exercise of judgment by a judicial officer in his case, it is all the law entitles him to, and although the judgment may be erroneous and the party injured, it is 'damnum absque injuria' for which no action lies. This in our opinion is the most reasonable rule, and will be found supported by the weight of authority, both in England and in this country."

The foregoing opinion, containing a clear enunciation of the law in the case in which it was announced, is of pertinency and value in the consideration of the few remaining points in the cause before us.

The right to vote, the question of qualification or disqualification of the person offering to vote, is to be decided by the tribunals established by the law for the ascertainment of the necessary facts that enter into the inquiry. Means are appointed and judges provided to determine the question, with all the guards that the nature of
112 the investigation admits of. This power and trust must be reposed somewhere, and in this State, and in all the States of the Union, it has been committed to judges of election, who are quasi judicial officers, clothed with the powers and discretion necessary for the performance of the duty, as delicate as it is important to the well-being of republican government.

The registration of voters is but another mode for attaining the

same ends, introduced into the government of some of the States, and now authorized in Maryland. It has the advantage of ascertaining before the days of election who are qualified to vote at the elections when they arrive. The officers appointed to ascertain and register the qualified voters are, by the law of Maryland, at the first registration, the same in number for each election district as the judges of election. They are appointed by the executive of the State, with care and a just regard to their qualifications for the duties of the office. They are sworn to perform these duties to the best of their skill and judgment, diligently and faithfully, without partiality
113 or prejudice, &c. They are to sit at times and places made known to all interested by the most public notice; and their mode of procedure is carefully marked out by the law. The judges of elections are by this means relieved from duties which they could but imperfectly perform in the brief space of one day, at the crowded polls of an exciting election.

It was also much insisted on in the argument that it was a violation of the 22d article of the declaration of rights to require a voter to give evidence against himself. In criminal cases this could not be done, and it is only to criminal cases that the article has application. In the view taken in this opinion the personal examination of the voter, under oath, contemplated or required by the registration act, can only be on such matters as touch his right to registration and voting. If the voter can be examined on oath as to age, residence, or color, or as to his knowledge of facts calculated to lead the mind of the judge to a proper conclusion upon those points of qualification, so the same examination can be pursued when the matter of
114 inquiry is any other of the disqualifications specified in the Constitution. If a party is disqualified by reason of his having been in armed hostility to the United States, his refusal to answer the question will not expose him to a criminal proceeding by the United States for treason. Nor will a negative answer. An affirmative answer might have that effect, and would be a proof of his disqualification to vote.

But he is not more compelled to answer the question, than he is to give an illegal vote, or to attempt to have his name registered as a legal voter, when his own conscience tells him, when probed, that he is in fact legally and constitutionally disqualified.

The argument that the 23d article of the bill of rights would be violated in carrying out the 3d sec. of art. 1 of the constitution in relation to disqualifications for larceny or other infamous crime, or the 5th section, for bribery, seems to be based upon a misapprehension of those sections. It is the conviction in both, and of course "by the law of the land," or "by due process of law," that disqualifies.
115 Judges of election or the officers of registration in neither case are to try and convict, but only to determine the fact of a previous conviction. They are to determine by evidence (the kind and degree it is not for this court now to say) the fact whether the party has been convicted of any of the offences mentioned. In my view of these sections the conviction spoken of is one that has taken

place since the adoption of the constitution. Since that date and before any of the elections under it, (except the one adopting it,) or before the act of registration went into effect, such convictions may have taken place which would gratify the language and provisions of the constitution and the law, so far as those elections or the first registration of voters are concerned. Their application to cases arising beyond these in the future is of course the more obvious. The punishment for bribery under the constitution of 1851 (art. 1, sec. 2) was the same with that in the 5th section of the present constitution, so that all that relates in said 5th sec. to convictions for acts of bribery since the 4th of July, 1851, and prescribing the punishment therefor, is not ex post facto.

116 I, therefore do not regard that these provisions of the constitution of this State or of the act of registration are obnoxious to the charge of being in conflict with the Constitution of the United States or the bill of rights of Maryland. This court has furnished a rule of construction applicable to the latter.

"The declaration of rights and the constitution compose one form of government, and must be interpreted as one instrument. The former announces principles on which the government about to be established will be based. If they differ, the constitution must be taken as a limitation or qualification of the general principle previously declared according to the subject and language employed." (Mayor, &c., of Baltimore, *ex rel.* of the Board of Police, 15 Md., 459.) If error has been committed, our admirable system of government affords the means of correction by a resort to the highest judicial tribunal in the land, the Supreme Court of the United States.

117 The question that has been submitted to the consideration of this court is purely a judicial one. We can exercise no legislative or conventional powers. The convention and people of Maryland have incorporated into their declaration of rights the duty of paramount allegiance to the Constitution and government of the United States, and have seen proper, in their wisdom and in the exercise of the sovereign power of the State, to declare and enact that all those who bore arms against the United States, or have been in any manner in the service of the so-called "Confederate States of America," or have aided the rebellion in various other ways, and manifested by open word or deed their adhesion to the cause of the enemies of the United States, or their desire for the triumph of said enemies over the arms of the United States, should not be intrusted with the right of suffrage; that they, in other words, should not participate in the elections in Maryland of State or national officers, unless their hostile acts and dispositions shall have been repudiated or changed by honorable military service in the armies of the United States, or

118 the right of suffrage shall be restored to them by an act of the general assembly passed by a vote of two-thirds of all the members elected to each house.

The wisdom of these measures rests with the people. Whether they should be altered, it is for the people to determine, in the manner and at the time provided for in the Constitution itself. If learned

counsel were right in the declarations made to the court that they disfranchised two-thirds or three-fourths of the sons of Maryland, it is a matter of deep regret and mortification that so many should have been found faithless to her standard when the call of duty and paramount allegiance summoned them to the maintenance of her cause, which was the cause of the Union. A single one found in the ranks or on the side of the enemy was too many. But it is to be remembered that it is not to be taken for granted that all who did not register their votes are necessarily disfranchised by the Constitution. To register is a voluntary act; and so is a refusal to be registered. It is not more compulsory than the act to vote or not to vote.

119 A far more favorable representation of the loyalty of the citizens of Maryland is found in an official document, according to the proclamation of the governor, announcing the vote upon the adoption of the constitution; 59,973 votes were polled for and against that instrument. And at the presidential election of 1864, occurring soon after the adoption of the constitution, the popular vote of Maryland was within a fraction of 70,000 votes, only 13,500 less than at the election for governor in 1861. The qualifications of the voters were the same then as now. They were judged of then by the judges of election, instead of, as now, by the officers of registration. But the change in the mode or means of determining the qualification of the voter can make no change in the result. I am therefore of the opinion that the writ of mandamus was properly refused by the circuit court for Montgomery county, and its judgment should be affirmed with costs to the appellees.

120 THOMAS ANDERSON
vs.
JOHN W. BAKER and OTHERS.

Justice Goldsborough delivered the following opinion:

Without expressing my views seriatim upon the important questions involved in this case, I am content to unite with the majority of the court in affirming the order of the court below, for the reasons assigned by my brothers Bowie, Cochran, and Weisel, in their respective opinions.

BRICE J. GOLDSBOROUGH.

121 THOMAS ANDERSON
vs.
JOHN W. BAKER and OTHERS.

Justice Bartol delivered the following opinion:

The first question presented by the record in this case is, whether the provisions contained in the fourth section of the first article of our State constitution are in conflict with the provisions of the Constitution of the United States.

Before proceding to examine that question it is necessary to determine whether it is one which this court has the jurisdiction and power to decide. Looking to the structure and organization of our govern-

ment, and to the whole current of authorities, this point seems to me to be free from all possible doubt or difficulty.

The cases that have heretofore arisen involving the constitutionality of acts of Congress or laws of a State have been decided upon
122 principles and reasons too firmly established to be now disturbed, and are plainly applicable. See Kent's Commentaries, vol. 1, 449 to 454, where the cases are collected. On page 453 the author says: "In Marbury *vs.* Madison, 1 Cranch, 137, the subject was brought under the consideration of the Supreme Court of the United States, and received a clear and elaborate discussion. The power and duty of the judiciary to disregard an unconstitutional act of Congress or of any State legislature were declared in an argument approaching to the precision and certainty of a mathematical demonstration."

The principles established by that great case have been ever since universally recognized and adopted.

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule.
123 If two laws conflict with each other, the courts must decide on the operation of each; so if a law be in opposition to the constitution; if both the constitution and the law apply to a particular case, so that the court must either decide that case conformably to the law disregarding the constitution, or conformably to the constitution disregarding the law, the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty." (1 Cranch, 177.)

Now it requires no argument to show that the same principle must govern courts of justice, when they are compelled to decide whether any provision in a State constitution is repugnant to the Constitution of the United States. This last, being the paramount law, if they are repugnant to each other, must prevail. This, in the language of Chief Justice Marshall, is "emphatically a judicial question," to be decided by the courts; it cannot, in any sense, be called a political question, to be finally determined by the legislative or executive department. Nor is it concluded by the adoption of the consti-
124 tution and the organization under it of the State government. So to maintain would render nugatory and worthless the limitations upon the powers of the States found in the Constitution of the United States. Those limitations are imposed, not only upon the State legislatures, but upon the States themselves, and can no more be transcended or violated by the organic law of a State than by a law enacted by the legislature.

To illustrate this, let us suppose that a State were to adopt a constitution containing a clause repealing a private charter, or impairing the obligation of any other valid and subsisting contract, made either by the State or between its citizens: would it be for a moment contended that such a provision would be valid, in the face of the express prohibition contained in the Constitution of the United States, declaring that no State shall pass any law impairing

the obligation of a contract? This point was expressly decided by the Supreme Court, in Dodge *vs.* Woolsey, (18 Howard, 331.)

125 The same principle must apply where the case is within any of the other inhibitions upon State legislation contained in the Constitution of the United States.

That constitution, Art. 1, Sec. 10, declares that "no State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contract." The only part of this section which can apply to the present case is that which inhibits the passage of any ex post facto law. Are the provisions of the 4th section of the 1st article of the State constitution ex post facto, in the sense in which those words are used in the Constitution of the United States?

This is a most grave and important question. None more so has ever been presented to the appellate court of our State for decision. I have given it as full and careful examination as it has been in my power, and shall proceed to express my opinion upon it, adopting as my guide the language of Chief Justice Buchanan, when dealing with a kindred subject: "It has been said that a legislative act

126 should not be pronounced unconstitutional or invalid in a doubtful case; nor should it where the doubt is bona fide and well founded, and not the result of a disinclination to deny the authority of the legislature, which all must feel, but none should yield to, in violation of a solemn duty. But where a judge is satisfied upon full consideration, that an act of the legislature is contrary to the Constitution of the United States, the supreme law, which he is bound to obey, and which must prevail over any act that comes in conflict and cannot stand with it, or is for any other reason invalid, he has no choice, and all that is left him is honestly and fearlessly to do his duty, from the faithful discharge of which, however unpleasant the task, no upright judge can shrink if he would. On the other hand, a judge should not suffer himself to be betrayed to pronounce an act unconstitutional or invalid on insufficient grounds, by a morbid apprehension that a contrary decision might be ascribed to the want of a proper sense of judicial duty." (Regent's case, 9 Gill, 383.)

127 It was suggested, in argument, that the court ought to construe the 4th section, art. 1, of our constitution, as operating prospectively from the time of its adoption, and thus avoid the difficulty. Such, no doubt, is the general rule of construction.

In Baughn *vs.* Nelson, 9 Gill, 303, which was a case involving the construction of the act of 1845, ch. 352, the court, after stating the general rule, said: "But this general principle, salutary and well-established as it is, as an element of jurisprudence, can have no application to a case where the legislature have declared, in language too express and plain to be mistaken, that they designed to give to the statute in question a retroactive operation."

Here, as in that case, the words are "too plain for dispute. There is no room for construction." It is impossible, therefore, to adopt the construction of this section suggested in argument, and declare that it is not retroactive in its operation.

128 But all retroactive laws are not ex post facto, in the meaning of the Constitution of the United States. Those words have been declared to have a technical meaning more restricted than their ordinary and common signification. This leads me to inquire what is the true meaning of the term ex post facto law in the Constitution of the United States."

The cases in the Supreme Court, in which they have come under consideration, are Calder and wife *vs.* Bull, 3 Dall., 386; Fletcher *vs.* Peck, 6 Cranch, 87; Satterler *vs.* Matthews, 2 Peters, 413; Watson *vs.* Mercer, 8 ibid., 88; Charles River Bridge *vs.* Warren Bridge, 11 ibid., 423; Carpenter *vs.* Com. of Pa., 17 Howard, 456.

They have also been considered in many cases arising in the courts of the different States; among those I have examined are Strong *vs.* Nash, 1 Blackf. Ind'a, 193; Lock *vs.* Dane, 9 Mass., 362; Ross's
129 case, 2 Pick., 169; Baughn *vs.* Nelson, 9 Gill, 299.

These cases do not appear to be in conflict, although different judges have used different language in defining the terms ex post facto as used in the Constitution. In Calder *vs.* Bull, Judge Chase defined an ex post facto law to be—

"1st. Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal, and punishes such action.

"2d. Every law that aggravates a crime or makes it greater than it was when committed.

"3d. Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.

"4th. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offence in order to convict the offender. All these and similar laws are manifestly unjust and oppressive."

130 The other judges, who delivered separate opinions, concurred substantially in the same views, and the subsequent cases have affirmed the same rule of interpretation.

In Fletcher *vs.* Peck, 6 Cranch, 138, Ch. J. Marshall defined an ex post facto law as one "which renders an act punishable in a manner in which it was not punishable when committed." He adds: "Such a law may inflict penalties on the person, or may inflict pecuniary penalties which swell the public treasury."

Chancellor Kent, 1 Com., 409, after giving Chief Justice Marshall's definition, says: "This definition is distinguished for its comprehensive brevity and precision, and extends to laws passed after the act, and affecting the person by way of punishment of that act, either in his person or estate. Ex post facto laws relate to penal and criminal proceedings which impose punishment or forfeiture, and not to civil proceedings, which affect private rights retrospectively.

131 Retrospective laws and State laws divesting vested rights, unless ex post facto, or impairing the obligation of contracts, do not fall within the prohibition contained in the Constitution of the United States, however repugnant they may be to the principles of sound legislation."

I have quoted thus at length from Chancellor Kent, because I believe he states correctly the result of the various decisions upon this subject.

The same construction is adopted by Judge Story. (3 Com. on Con., sec. 1339.)

It is argued that the provision of our State constitution under consideration cannot fall within the definition of an ex post facto law, because it relates to the election franchise, and is intended to fix the qualification of voters; and that being a subject belonging exclusively to the people of the State, the courts of the United States have nothing to do with it. There can be no doubt of the soundness of the position that the States have the sole and exclusive power
132 of regulating the right of suffrage, and of fixing the qualification of voters, and that the federal government cannot constitutionally control or interfere with the State in the legitimate exercise of that power, but it by no means follows that the State can, in the exercise of that power or of any other of her reserved powers, so legislate as to inflict upon the citizen by way of punishment, pains, penalties, or forfeiture by law enacted, ex post facto, within the prohibition of the 10th section, art. 1st, of the Constitution of the United States. As well might it be said that because the State has exclusive jurisdiction over contracts between her citizens and the remedies for their enforcement, that she can by law or constitution deprive the citizen of the protection thrown over him by the Constitution of the United States, which maintains the obligation of the contract inviolate, and beyond the power of the State to impair it. The provision which protects his person and his property from the unjust operation of ex post facto laws is equally comprehensive, and when it
133 applies is alike inviolate by the State, no matter by what form of legislation.

By this construction alone will those provisions in the Constitution of the United States prove, as they were designed, "a bulwark in favor of personal security and private rights." If, then, the provisions of the 4th section are, within the meaning of the Constitution of the United States, an ex post facto law, they are not protected from its operation, because they form part of the organic law relating to the right of suffrage.

Are they ex post facto in the sense and meaning of the Constitution of the United States?

They are retroactive and relate to acts done and words spoken antecedently, before the adoption of the constitution, and declare that no person who has at any time done the acts or made the declarations therein enumerated, "shall ever be entitled to vote at any election to be held in this State, or to hold any office of honor, profit, or trust, under the laws of this State, unless since such unlawful acts he shall have voluntarily entered into the military service of
134 the United States and been honorably discharged therefrom, or shall be on the day of election actually and voluntarily in such service, or unless he shall be restored to his full rights of citi-

zenship by an act of the general assembly passed by two-thirds of all the members elected to each house."

To ascertain the true construction and effect of these provisions, it is necessary to examine the first, third, and fifth sections of the same article, and the seventh article of the declaration of rights, which must be construed with them.

This article declares "that the right of the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose, elections ought to be free and frequent, and every free white male citizen having the qualifications prescribed by the constitution ought to have the right of suffrage."

The qualifications of a voter are prescribed in the first sec-
135 tion. They are: "Every white male citizen of the United States of the age of twenty-one years or upwards, who shall have resided in the State one year next preceding the election, and six months in any county or legislative district of Baltimore city, and who shall comply with the provisions of this article of the constitution, shall be entitled to vote at all elections hereafter held in this State."

The 3d, 4th, and 5th sections declare the causes of disqualification, or causes for which the citizen forfeits the right of suffrage.

With the exception of lunatics, or persons non compos mentis, who are incapable of doing any valid civil act, and are therefore excluded, all the causes of disqualification named in the 3d, 4th, and 5th sections are either for offences before known to the law, or so declared by the constitution.

By the 3d section persons convicted of larceny or other infamous crimes, unless pardoned by the governor, are disqualified.
136 Here disfranchisement is a punishment consequent upon conviction; this provision is prospective only in its operation.

By the 5th section persons convicted of bribery at elections, and other offences therein enumerated are, in addition to the penalties imposed by law, disqualified from voting or holding office.

By the 4th section persons who have at any time done the acts or made the declarations therein enumerated—some of them being offences against the United States, and some of them, (to wit, words spoken and desires expressed,) not offences known to the law before the adoption of the constitution, and which are therein for the first time declared to be unlawful—are punished with disfranchisement. It is said that disfranchisement, under the 4th section, is not intended as punishment.

But in the constitution itself, in the 5th section, disfranchisement is expressly declared to be punishment. How, then, can it
137 be said that in the 4th section, where the same consequence is denounced against the persons who have committed the unlawful acts therein enumerated, can the disfranchisement be construed not to be a punishment?

This, then, is the nature of a criminal enactment, for it declares certain acts to be unlawful, and provides as a consequence of their commission that the offender shall be disfranchised. The criminal

character of the provision would scarcely be disputed if the constitution provided, in terms, that the offence should be evidence as in the case of larceny and bribery by conviction in a court of justice, but it cannot change the penal character of the enactment if the law-making power fails to secure to the accused the safeguard and protection of a trial according to the law of the land.

If I am right in this construction, then the 4th section is an ex post facto law within the strictest definition of these terms, and
138 therefore within the inhibition of the Constitution of the United States.

The next question to be examined is whether the provisions of the act of 1865, ch. 174, entitled An act for the registration of the voters of the State, are in conformity with the bill of rights and constitution of Maryland. This question will be considered apart from any objections to the provisions of the constitution, and assuming them to be in all respects valid.

It is contended that the act is null and void, because it is not "enacted in articles and sections in the same manner as the code is arranged," as directed by sec. 28, art. 3, of the constitution.

It is plain, upon an inspection of the act, that this direction has not been complied with. It is passed in the ancient form used and practiced before the code was adopted. The 28 section of the 3d article contemplates and directs that the law, in its body and form,
139 shall be codified by the legislature in passing it. Such has been the uniform construction of that section and practice under it since the code was adopted. The provision is the same as was contained in the constitution of 1851. In this respect the legislature have failed to observe the directions of the constitution.

The act passed at the same session, ch. 159, does not, in my opinion, remove the objection. That act does no more than declare the purpose of the legislature with regards to laws thereafter to be enacted on the subject of registration, but does not in fact codify them. I do not think, however, that this omission renders the act void. The provision of the constitution in this respect is directory merely; and although a compliance with it would promote the public convenience, and carry out the policy of the State by maintaining uniformity in the code embodying the general statute law, yet, looking upon the words of the constitution as directory only, and relating to form rather than substance, a failure to comply with the form prescribed would not, either upon reason or authority, render
140 the act null.

Far more grave and serious, and, in my opinion, fatal objections to the registration act now under consideration, present themselves when its several provisions are examined and brought to the test of those vital and fundamental principles embodied in our declaration of rights, which form part of our organic law, and are designed as restraints upon the powers of the legislature as well as of the other departments of the government, and which are, in the language of Chancellor Kent, "part of the muniments of freemen, showing their title to protection." (2 Kent, 8.)

The provisions of the registration law are, in my opinion, repugnant to the declaration of rights of 1864, and are not authorized or sanctioned by the constitution of Maryland.

The bill of rights and the constitution form one instrument, and are to be construed together. So far as this question is concerned, they are not in conflict.

The plain construction of the 1st, 2d, 3d, 4th, and 5th sec-
141 tions of the 1st article of the constitution, and the 7th article of the bill of rights, is that the right of suffrage is secured to every white male citizen of the United States of the age of 21 years or upwards, and having the requisite residence; unless, for some of the causes enumerated in the 3d, 4th, or 5th sections, he is disqualified, or that right has been forfeited. Of course I do not hold that the right of suffrage is a natural or inherent right existing independently of the organic law. For the purposes of this question I treat it as a right to be exercised only in conformity with the organic law; but where it exists it is a most valuable right, entitled to the same protection as the right to any property or franchise. Where the qualifications enumerated in the 1st section exist, the right of suffrage is conferred upon the citizen, and to deprive him of that right the cause of disqualification must be shown.

By the 2d section of the 1st article and the 41st section of
142 the 3d article it is made the duty of the legislature to pass laws for the registration of voters.

How is that power to be exercised? The constitution does not prescribe the mode further than to require that it shall be done by law. Here the subject is left to be dealt with by the legislature in the same manner as they may deal with any other subject confided by the constitution to their authority, and to be regulated by law passed in subordination to the restraints upon the legislative will imposed by the declaration of rights, and in such manner as that the citizen shall not be deprived of those securities for his protection guaranteed to him by the organic law, and of which the legislature cannot constitutionally deprive him.

By the registration act the legislature has conferred upon the officers of registration the most extraordinary and despotic powers, which are thus briefly but correctly stated in the appellant's brief:

1. They have the power of summoning witnesses to prove the
143 qualification of voters, and are invested with judicial functions the same as a judge of a circuit court, for the purpose of issuing summons, attachments, and commitments.

2. They are authorized to pronounce judgment against any citizen for acts committed within or without the jurisdiction of Maryland, which amounts to a forfeiture of his right to vote.

3. They are not required to give any notice of the charges to the accused party, or to confront him with witnesses, or to try him by jury, or to keep any written record of the trial.

4. They are only required to record his conviction in these words: "Disqualified for disloyalty under article 1 of the constitution."

5. The ordinary rules of evidence are disregarded; the guilt of

parties accused of treason and bribery is permitted to be proved without trial or conviction by a competent court; a party is required to testify against himself, particularly by section five, wherein the registrars are directed to exact an oath from the citizen to
144 answer any questions touching his right of voting, and this even when his oath may be discredited.

6. The judgment of the registrars disfranchises the citizen forever unless discharged by a two-thirds vote of the general assembly.

It seems to me that the act is in plain conflict with the second article of the bill of rights, by depriving the citizen of the benefit of "the common law and the trial by jury according to the course of that law;" 2d, with article 20 which declares that the trial of facts where they arise is one of the greatest securities of the lives, liberties, and estate of the people, and especially with article 23, which declares "that no man ought" to be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land."

145 These words "law of the land" first used in magna charta have been universally interpreted to mean "law in its regular course of administration through courts of justice." (See Coke's Inst., 45, 50; 2d Kent, 13; Story on Const., 661.) In 9 G. & J., 412, C. J. Buchanan said these provisions in the bill of rights "were intended as restraints upon the legislative power, by means of courts of justice, in which the laws were to be administered, and where all would be entitled to be heard, and have an opportunity afforded them of asserting and defending their rights against any attempted invasion.' (See 2 Md.. 452; 1 Md. Ch. D., 252; 3 Kern, N. Y., 394, &c.) In 4 Hill, 145, C. J. Bronson, speaking of the provision in the constitution of New York, said: "The words law of the land, as here used, do not mean a statute passed for the purpose of working the wrong;" and again, "the meaning of the section there seems to be that no member of the State shall be disfranchised of any of his rights and privileges unless the matter be adjudged against him upon trial had ac-
146 cording to the course of the common law."

The registration act, by making the decision of the registrars final, and failing to provide any appeal or other mode by which the right of the citizen to his franchise might be tried and determined in due course of law, deprives him of the protection of this great provision in our bill of rights.

The powers conferred by this act upon the registrars are wholly dissimilar from those heretofore held and exercised by judges of election in this State, and no analogy can properly be drawn between them, nor does it seem to me, is any precedent furnished by our past legislation for conferring upon subordinate tribunals created by the legislature, such extraordinary and absolute judicial powers. The provisions of the constitution do not, in express terms, authorize the legislature to confer such powers on the registrars, and such authority cannot be implied in the face of the express prohibitions of the declaration of rights.

Believing the provisions of the registration act to be plainly
147 repugnant to the declaration of rights, I think it ought to be declared inoperative, and that the writ of mandamus prayed for by the appellant ought for that reason to be refused.

148 And the said court of appeals passed and filed their order, which is as follows, to wit :

THOMAS ANDERSON
vs.
JOHN W. BAKER, GEORGE ERNEST, and Julian Magruder.

The appeal in this cause, standing ready for hearing, was argued by the counsel of the respective parties, and the proceedings have since been read and considered by the court.

It is thereupon, this second day of November, in the year 1865, by the court of appeals of Maryland, and by the authority thereof, adjudged and ordered that the judgment of the circuit court for Montgomery county, from which the appeal in this cause is taken, be and the same is hereby affirmed with costs to the appellees.

RICHARD J. BOWIE.
BRICE J. GOLDSBOROUGH.
S. MORRIS COCHRAN.
DANIEL WEISEL.

149 And afterwards, to wit, on the second day of December, in the year eighteen hundred and sixty-five, the said State at the relation of Thomas Anderson, by his attorneys aforesaid, produces to the court of appeals here, the writ of the United States for the correcting of errors of and upon the premises, commanding the record of the proceedings and order last aforesaid so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States; which said writ is in these word :

UNITED STATES OF AMERICA, *ss :*

The President of the United States to the honorable the judges of the court of appeals of the State of Maryland, greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of Maryland, before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be
150 had in the said suit between the State of Maryland on the relation of Thomas Anderson, appellant, and John W. Baker, George Ernest, and Julian Magruder, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or

wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Thomas Anderson, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judg-
151 ment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-four.

D. W. MIDDLETON,
Clerk of the Supreme Court of United States.

Issued 30th November, 1865.

Allowed by— RICHARD J. BOWIE,
Chief Justice of the Court of Appeals of Maryland,
2d December, 1865.

152 And the said State, at the relation of Thomas Anderson, on the day and year last aforesaid mentioned, produces to the court here the writ of error bond relating to the writ of error aforesaid, which said bond is in these words :

Know all men by these presents, that we, Thomas Anderson, Washington Waters, W. Veirs Bouic, and George Peters, are held and firmly bound unto John W. Baker, George Ernest, and Julian Magruder, in the full and just sum of three hundred dollars, to be paid to the said John W. Baker, George Ernest, and Julian Magruder, their certain attorney, executors, administrators, or assigns, to which payment. well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this second day of December, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas lately, at a court of appeals of the State of Maryland, in a suit depending in said court between the State of Maryland, on
153 on the relation of Thomas Anderson, appellant, and John W. Baker, George Ernest, and Julian Magruder, judgment was rendered against the said Thomas Anderson ; and the said Thomas Anderson, having obtained a writ of error and filed a copy thereof in the clerk's

office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John W. Baker, George Ernest, and Julian Magruder, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such that if the said Thomas Anderson shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else, to remain in full force and virtue.

WASHINGTON WATERS. [SEAL.]
W. VEIRS BOUIC. [SEAL.]
GEORGE PETER. [SEAL.]

Signed, sealed, and delivered in presence of—
R. J. BRENT.

Approved by—

RICHARD J. BOWIE, *C. J.*

154 And at the same time, to wit, on the second day of December, in the year eighteen hundred and sixty-five, the said State, at the relation of Thomas Anderson, files in court here a citation, which is in the following words, to wit:

The United States of America to John W. Baker, George Ernest, and Julian Magruder, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of Maryland, wherein the State of Maryland, on the relation of Thomas Anderson, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in
155 that behalf.

Witness the honorable Richard J. Bowie, chief justice of the court of appeals of Maryland, this second day of December, in the year of our Lord one thousand eight hundred and sixty-five.

RICHARD J. BOWIE, *C. J. of Md.*

Service acknowledged by me this second day of December, eighteen hundred and sixty-five.

A. RANDALL,
Attorney General of Maryland.

In pursuance whereof and according to the form and effect of the act of Congress of the United States in such case made and provided, a transcript of the record and proceedings of the order last aforesaid

so as aforesaid rendered, with all things concerning the same, together with the said writ of error, are hereby transmitted to the said
156 Supreme Court of the United States accordingly, &c.

Test: GEORGE EARLE,
Clerk Court of Appeals of Maryland.

MARYLAND, *sct:*

I, George Earle, clerk of the court of appeals of Maryland, do hereby certify that the aforegoing is truly taken from the record of proceedings of the court of appeals of the State of Maryland.

In testimony whereof, I have hereunto set my hand as clerk, and affixed the seal of the court of appeals of Maryland, this 13th day of December, A. D. 1865.

[SEAL.] GEORGE EARLE,
Clerk Court of Appeals of Maryland.

[5-ct. U. S. rev. stamp.]

Filed January 6, 1866.

S,

THOMAS

JULIAN

Supreme Court of the United States,

Error from Court of Appeals of Maryland.

STATE OF MARYLAND, ex Relatione, THOMAS ANDERSON

vs.

JOHN W. BAKER, GEORGE EARNEST, JULIAN MAGRUDER, Officers of Registration.

BRIEF OF APPELLANT'S COUNSEL.

STATEMENT OF FACTS.

It appears from the averments of the petition and the admissions of the answer, that on the 29th August, 1865, while the Respondents, as Officers of Registration under the Act of March, 1865, were in session performing their duties as such, that Thomas Anderson, the relator, appeared before them, and presented a written paper marked A, (p. 5 of Record,) wherein he claimed that he was born in the 4th Election District of Montgomery County, State of Maryland, of which the Respondents were the Registrars, and that he had resided therein for sixty years, except during the interval of time between 1827 and 1838; that he was a free white male citizen of Maryland, and as such has always exercised the right to vote at the elections during his residence as aforesaid; that he has never committed any act, which has subjected him to military or civil arrest; nor had he in any manner surrendered or forfeited his just title as a citizen of this State or of the United States. He therefore demanded that he be registered in the column of legal voters.

The Petitioner avers, "that said named parties, acting in the capacity of Officers of Registration, have resolved to reject him

from the registry of legal voters in said district, *without any just or legal cause whatsoever.*"

Two of the Respondents answer this averment as follows: "These Respondents deny that they, acting in the capacity of Officers of Registration, have declined to recognize the just right and claim of Petitioner, or have resolved to reject him from the registry of *legal* voters in said District, without any just or legal cause. On the contrary thereof, the Petitioner has refused to comply with the Constitution and Law of this State, *and to take the oath required therein, in order to enable your Respondents to decide then and there on his just right or claim as a legal voter.*"

This averment of the answer specifically puts at issue the validity of those sections of the Constitution and Laws which it is claimed authorized the Respondents to administer the test oath imposed by the Constitution of Maryland and the Registry Act, "in order to enable them to decide then and there on his just right or claim as a legal voter."

The Petitioner avers his birth in the 4th Election District of Montgomery County, his long residence, and his being a white male citizen of Maryland, and his constant use and enjoyment of the right of suffrage.

One of the Respondents admits the truth of all the facts alleged in the petition, while two of them say, "they have no knowledge whether the Petitioner was born and resided or voted or exercised the privilege of a citizen of Maryland."

This is evasive, because they must be presumed to know his residence and the facts set out concerning his citizenship, as Section 5 of the Act of 1865, ch. 174, makes it their duty "to ascertain and register the name of every white male person resident in and temporarily absent from their District," and hence their answer is evasive, and the allegations of the Petitioner must stand *pro confesso*, or the return be quashed.

The Relator moved to quash and set aside the returns of the Respondent, whereupon, on consideration of the petition, answers and motion, the petition was dismissed, and an appeal was duly taken.

The Disqualifying Clauses of the Constitution of Maryland.

An examination of Section 4, Article 1, of the Maryland Constitution of 1864, and of the Registry Act of March, 1865, ch. 174, will disclose the magnitude of the question involved in the present discussion.

The practical operation of these provisions of the Constitution is exhibited in the following tabular statement:

List of Registered Votes in the City of Baltimore, so far as heard from, as compared with the Presidential Vote of 1860, *taken from Official Sources.*

	1865.	1860.
1st Ward,		1,247
2d "	488	1,618
3d "	564	1,692
4th "	462	1,331
5th "	547	1,682
6th "	706	1,600
7th "	621	1,747
8th " [The aggregate Official vote in	325	1,406
9th " 1860 was published at 30,165,	397	1,624
10th " being a difference of 79 votes as	409	1,731
11th " compared with the returns as	389	1,391
12th " published by Wards.]	471	1,070
13th "	502	1,400
14th "	506	1,680
15th "	552	1,738
16th "	607	1,726
17th "		1,343
18th "	628	1,625
19th "	489	1,185
20th "	426	1,240
	9,089	30,076

It will be seen that two of the wards, the 1st and 17th, are not included, as no reports from them have been published, as required by law, but these two wards will be assumed as increasing the aggregate of qualified voters to 10,000, so that, without making any allowance for the increase of population in the City of Baltimore, within the last five years, which is known to be enormous, over 20,000 of her voters are disqualified.

Assuming that an approximate proportion will be preserved in the Counties, then the government of the State of Maryland is given up to an officially ascertained and registered minority of one-third of its white adults. The Registry Law makes no provision for the rectification of this Registry; except by special acts of grace accorded by two-thirds of the General Assembly.

The great barriers of Constitutional Liberty, in a time of great excitement, have been broken down, and the government of Mary-

land, instead of being framed in accordance with principles which our fathers bequeathed to us, and, in harmony with her sister States, is now organized on the system of the primary meetings of a political party, where all who differ concerning public men or measures are excluded.

Those who have invested the system of party tactics as first established by Tammany Hall, and made applicable to the party elections of the City of New York, with the sanctions of Constitutional and Statutory enactment, have been discoverers in that branch of political science which teaches how a minority may govern a majority.

The Petitioner claims that Section 4, of Article 1, of the Maryland Constitution of 1864, is in conflict with the Federal Constitution. That Section is herein inserted:

"SEC. 4. No person who has at any time been in armed hostility to the United States, or the lawful authorities thereof, or who has been in any manner in the service of the so-called 'Confederate States of America,' and no person who has voluntarily left this State and gone within the military lines of the so-called 'Confederate States or armies,' with the purpose of adhering to said States or armies, and no person who has given any aid, comfort, countenance or support to those engaged in armed hostility to the United States, or in any manner adhered to the enemies of the United States, either by contributing to the enemies of the United States, or unlawfully sending within the lines of such enemies money or goods, or letters, or information, or who has disloyally held communication with the enemies of the United States, or who has advised any person to enter the service of said enemies, or aided any person so to enter, or who has by any open deed or word declared his adhesion to the cause of the enemies of the United States, or his desire for the triumph of said enemies over the arms of the United States, shall ever be entitled to vote at any election to be held in this State, or to hold any office of honor, profit or trust under the laws of this State, unless since such unlawful acts he shall have voluntarily entered into the military service of the United States, and been honorably discharged therefrom, or shall be on the day of election, actually and voluntarily in such service, or unless he shall be restored to his full rights of citizenship by an act of the General Assembly passed by a vote of two-thirds of all the members elected to each House, and it shall be the duty of all Officers of Registration and Judges of Election carefully to exclude from voting, or being registered, all persons so as above disqualified; and the Judges of Election at the first election held under this Constitution shall, and at any subseqent election may, admin-

ister to any person offering to vote the following oath or affirmation. I do swear or affirm that I am a citizen of the United States, that I have never given any aid, countenance or support to those in armed hostility to the United States, that I have never expressed a desire for the triumph of said enemies over the arms of the United States, and that I will bear true faith and allegiance to the United States and support the Constitution and laws thereof as the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding; that I will in all respects demean myself as a loyal citizen of the United States, and that I make this oath or affirmation without any reservation or evasion, and believe it to be binding on me; and any person declining to take such oath shall not be allowed to vote, but the taking of such oath shall not be deemed conclusive evidence of the right of such person to vote; and any person swearing or affirming falsely shall be liable to the penalties of perjury, and it shall be the duty of the proper officers of registration to allow no person to be registered until he shall have taken the oath or affirmation above set out, and it shall be the duty of the Judges of Election in all their returns of the first election held under this Constitution to state in their said returns that every person who has voted has taken such oath or affirmation. But the provisions of this section in relation to acts against the United States shall not apply to any person not a citizen of the United States who shall have committed such acts while in the service of some foreign country at war against the United States, and who has, since such acts, been naturalized, or may be naturalized, under the laws of the United States, and the oath above set forth shall be taken in the case of such persons in such sense."

It also claimed that Sections 5, 6, 8, 13 and 18 of the Maryland Registration Law of March 24, 1865, chap. 174, Statutes of Maryland, 1864, page 322, which direct the Registrars to administer the test oath and ask such other questions as they may think proper; and to *inquire and ascertain to their satisfaction* if any applicant has not performed some act declared by the Constitution to be a cause of disqualification, are repugnant to the Federal Constitution.

The persons disfranchised may be described generally as follows:

I. Those who have performed acts which are recognized and defined by law as unlawful, such as armed hostility to the United States, persons who have adhered to the so-called Confederate States, giving aid and comfort to them, or held office under them.

II. Those who have performed acts, which are not recognized or defined by law as criminal or unlawful.

III. Those who have committed no act; but have given utterance by word to their desire for the triumph of the armed enemies of the United States.

It will be observed, that all the disqualifications, with one or two exceptions, arise from some acts done, or words spoken, against the United States, and not against the State of Maryland.

The last class excluded from suffrage are those who have committed no acts, but only by word expressed their desire "for the triumph of the enemies of the United States over the arms of the United States."

It has been reserved for Maryland to be the first American State to punish words as treasonable.

The spirit that dictated this clause finds its kindred in, and is best represented by, the following extract from 4 Blackstone, 79—80.

"We have two instances in the reign of Edward the Fourth, of persons executed for treasonable words; the one a citizen of London, who said he would make his son heir of *the crown*, being the sign of the house in which he lived; the other, a gentleman, whose favorite buck the King killed in hunting, whereupon he wished it, horns and all, in the King's belly.

"These were esteemed hard cases; and the Chief Justice Markham, rather chose to leave his place than assent to the latter judgment."

It is to be doubted whether any of the Registrars in the State will follow the example of Chief Justice Markham.

Blackstone continues: "But now it seems to be clearly agreed that by the Common Law and the Statute of Edward III. words spoken amount only to a high misdemeanor, and no treason. For they may be spoken in heat, without any intention, or be mistaken, perverted, or misremembered by the hearers; their meaning depends always on their connection with other words and things; they may signify differently even according to the tone of voice with which they are delivered; and sometime silence, itself, is more expressive than any discourse."

POINTS OF LAW.

I. The petitioner is entitled to the summary relief of the writ of mandamus.

II. The disqualifying clauses and the test oath of the 4th section of Article 1 of the present Constitution, and the Registry Law

of March 12, 1865, ch. 174, so far as the latter undertakes to carry out the disqualifications, declared by said section 4, are null and void, by reason of the prohibitions of the Constitution of the United States.

WRIT OF MANDAMUS THE PROPER REMEDY.

I. It is not denied that the Registrars have, and exercise a discretion in registering voters; and that this discretion is not subject to control by the writ of mandamus.

But it is asserted that when these officers refuse to proceed and exercise their discretion, for the reason that the petitioner has refused to take an illegal and *ex post facto* oath, and assign and return the failure to take that oath, as the reason for their refusal to register, that then it is competent for this Court to require *them* to proceed to the examination and investigation of his rights to registration, and to determine the same without regard to the provisions of the laws of Maryland conflicting with the Federal Constitution. The mere proceeding to hear and determine the application of Petitioner for registration, disregarding these unconstitutional oaths, is a ministerial act; while the decision of the Registrars, after hearing, is a matter of discretion.

The Respondents return, officially, that they have not been "enabled to decide then and there on the right or claim of Petitioner as a legal voter," because "he has refused to take the oath required by the Constitution and Laws of Maryland."

Hence, these Respondents have not exercised their judicial discretion, but have declined the application simply because the oath was not taken. This Court is not asked to require these Registrars to register the Petitioner as a qualified voter, but it is asked to require these Respondents to proceed and determine the rights and claim of the Petitioner to registration, without regarding the unconstitutional provisions of the Maryland Laws.

In no other way can he obtain, or be admitted to, the enjoyment of his elective franchise. except through the action of the Respondennts, to whose office it appertains, to provide for the exercise of his franchise, according to the Constitution and laws.

Mr. Justice Blackstone (3 Black. 110) says, that the writ of mandamus "is a high prerogative writ, of a most extensive remedial character; and may be issued, in some cases, when the injured party has also another more tedious method of redress; as in case of admission or restitution of an office; but it issues *in all cases*

where the party hath a right to have anything done and hath no other pecific remedy; a mandamus therefore lies to compel the admission or restoration of the party applying to any office or *franchise of a public nature, whether spiritual or temporal, &c.*" And he continues, "for it is the peculiar business of the Court of Kings Bench, to superintend all inferior tribunals, and therein to enforce the due exercise of their judicial or ministerial powers, with which the crown or legislature have invested them; and this, by not only restricting their excesses; but *also by quickeniug their negligence and obviating their denial of justice.*"

Runkel *vs.* Winemiller, 4 H. & McH. 429.
People *vs.* Cortland, 24 How. p. 125.
The King *vs.* Justices of Kent, 14 Ent. 395.
Hull *vs.* Supervisors, &c. 9 John. 261.
Harwood *vs.* Marshall, 9 Md. 97.
Tapping on Mand. p. 64 and cases cited.

The Petitioner has no means of obtaining his elective franchise except in a proceeding of this character. If he recover damages that would not give him the franchise; and if the Courts do not sustain proceedings of this character, the elective franchise of the citizens of Maryland will be subject to the uncontrolled caprice of the Executive Appointees without responsibility, except in cases of express malice or corruption, which is not alleged in the present case.

Bevard *vs.* Hoffman, 18 Md. 479.
The People, &c. *vs.* Supervisors, 10 Wend. 316, 398.
The King *vs.* St. Catharine's Dock Co. 4 Barn. & Ad. 363.

The Franchise of Voting is Property.

The right of voting is recognized by law as property, and cannot be impugned without injury, for which an action may be brought against judges of election where no special malice or corruption is shown.

Lincoln *vs.* Hapgood, 11 Mass. 35.
Parker *vs.* Ankeny, *et al.*, 11 Ohio, 372.
Osby *vs.* White, 2 Ld. Raym. 938.

The right of property, in the elective franchise, is also affirmed in the following cases, but it is considered that special malice

or corruption should be alleged before exemplary damages are recovered.

11 John. 114.
1 N. H. 88.
Bevard *vs.* Hoffman, 18 Md. 480.

In addition to this, most of the States, including Maryland, have declared the inviolability of the right of suffrage. It is the badge and symbol of freedom; it is essential to the protection of the citizen, and it belongs of right to every free white male citizen of Maryland, having the required residence and age.

Article 7 of the Declaration of Rights, forming a part of the Constitution of Maryland, declares as follows:

"Art. 7. That the right of the people to participate in the Legislature is the best security of liberty, *and the foundation of all free government;* for this purpose elections ought to be frequent, *and every free white male citizen, having the qualifications prescribed by the Constitution, ought to have the right of suffrage.*"

What, then, are the qualifications which entitle every free white male citizen to vote?

They are found in Article 1 of the Constitution of 1864. At the time the Convention framed this Article, there was an organized government in Maryland, formed by citizens, who had rights of property in the elective franchise, in lands, and in other property; and the decisions already quoted, show that the elective franchise is even better protected than ordinary rights of property. The ownership of land and of the elective franchise, stand on precisely the same footing, with the exceptions hereafter explained; even the franchises and privileges of mere corporations were fully protected and secured, and could not be forfeited except "by due course of law."

Forfeiture is the enforcement of a condition annexed to every class or description of rights or property which a citizen can own.

Life, lands, liberty, the right of voting and of holding office, are all subject to forfeiture, but this forfeiture, in this country. can only be enforced in due course of law, after trial and rendition of judgment.

This elective franchise cannot be lost except by due course of law.

Taylor *vs.* Porter, 4 Hill, 140, *et seq.* Bronson, J., p. 146, holds: "The meaning of the section seems ["by the course of law or by the law of the land,"] to be that *no member of the State shall be disfranchised, or be deprived of any of his rights*, unless the matter shall be adjudged against him upon trial, had according to the

course of the Common Law. *It must be ascertained judicially that he has forfeited his privileges*, or some one else has a superior title to the property he possesses, before either of them can be taken from him. *It cannot be done by mere legislation.*"

The Constitution of the United States provides that on impeachment, no other punishment shall be inflicted by the Court of Impeachment, except the forfeiture of the right of holding office; rightly esteeming it an awful punishment thus to brand a citizen by the judgment of the highest Court in the land, with the terrible doom of deprivation of his political rights. The Registry Law, having vested the Officers of Registration with greater powers than the Senate of the United States sitting as a Court of Impeachment, has made this punishment so ordinary that, while, in its effects, it is destructive of the fundamental principles of free government, as is apparent by the delivery of the franchises, offices and sovereignties of the State of Maryland into the hands of an officially ascertained minority, yet the infamy that should attach to so terrible a judgment is much diminished by the arbitrary acts of the three hundred judges appointed as the mere agents of the Governor.

The right of suffrage is forfeited by the conviction for larceny and other infamous crimes, but in order to forfeit, the right to the thing forfeited must be admitted. It is not denied that the Constitution can provide for the forfeiture of the elective franchise of any traitor to the State, but it is contended that the Constitution has not vested the Officers of Registration with the power to try citizens for treason, and declare a punishment if found guilty.

Art. 20, of the Bill of Rights of 1864, says "That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the people." See also the elaborate and well considered case of Kilham *vs.* Wood, *et al.* 2 Mass. p. 236.

Now this right of suffrage cannot be lost unless the party be guilty of disloyalty; and *the only proof of the guilt of the party is conviction and judgment rendered in due course of law.*

A citizen cannot be punished, unless found guilty of some act forbidden by law, and no tribunal on the earth can declare otherwise.

It is claimed that the Constitution can arbitrarily declare on what conditions the elective franchise shall be exercised; and that disloyal parties are excluded, and that they cannot complain of that exclusion.

But this assumes the very question under discussion. Disloyalty, like larceny, felony or bribery, is a cause of the forfeiture of a pre-existing and conceded right.

It is no where provided in the Constitution that a man should prove himself to be an honest man, who has committed neither murder, nor larceny, nor bribery, nor disloyalty, as a qualification to vote; because the Constitution could not be guilty of the folly of overturning the fundamental or natural principle, that a man is presumed to be innocent of a crime until convicted, and *to require him to prove his innocence, is requiring the proof of a negative.*

Hence, neither honesty nor loyalty can be called a qualification for a voter, but the lack of either quality, judicially ascertained, is declared a cause of forfeiture; but the right to vote must pre-exist, in order to be forfeited; and if the right pre-exist, it is a valuable franchise, protected by law, as much as is the right to any other class of property.

If the Registrars have the power to exclude citizens from the right of voting, in virtue of enactments without which the citizen is, under the Constitution, entitled to vote, then it is evident that a citizen is found guilty of acts, for which a forfeiture is enforced, without the intervention of the judiciary, in the due course of law.

It would be a bill of attainder, or of pains and penalties, which latter is included under the description of Bill of Attainder, as used in the Federal Constitution, (see Smith's Commentaries on Stat. and Constitutional Law, § 230,) and it would possess features more obnoxious then a Bill of Attainder by the English Parliament, which always includes the names of the parties attainted, who are thus presumed in law to have had a species of trial before the Parliament. But the Bill of Attainder, which would result from the construction the Legislature has placed on the Constitution, is of this nature, that it attaints citizens in blank, and then institutes an Executive commission to fill the blank with names, and thus to enforce its pains and penalties, without the intervention of any judicial authority.

"In the due course of law," no punishment or forfeiture can be enforced against a party until *after judgment* of the Court. A conviction does not work any disability. 4 Black. 381–2. "After conviction only a man is liable to none of these liabilities; for there is still in contemplation of law a possibility of his innocence; something may be offered in arrest of judgment. * * * * * Upon judgment of death therefore, *and not before*, the attainder of a criminal commences.

"And therefore, either upon judgment of outlawry or of death, for treason or for felony a man shall be said to be attainted. The consequence of attainder are forfeiture and corruption of the blood.

"Forfeiture is two-fold; of real and personal estate. * * * But, though after attainder, the forfeiture relates both to the time of treason committed, yet it does not take effect unless an attainder be had, of which it is one of the points; and therefore, *if a traitor dies before judgment pronounced, or is killed in open rebellion, or is hanged by martial law, it works no forfeiture of his lands, for he was never attainted of treason.*"

No citizen can be deprived of any right or estate except by due process of law.

Kent sums up the whole doctrine briefly but clearly in 2 Kent, 12, 13. These principles "must be regarded as fundamental doctrines in every State, for the Colonies were parties to the National Declaration of Rights in 1774, *in which the trial by jury, and the other rights and liberties of English subjects,* were peremptorily claimed as their undoubted inheritance and birthright. It may be received as a proposition, universally understood and acknowledged throughout this country, that no person can be taken or imprisoned; or disseized of his freehold or estate, or exiled, *or condemned, or deprived of life, liberty and property,* unless by the law of the land, or the judgment of his peers. The words, *by the law of the land,* as used originally in Magna Charta, in reference to this subject, are understood to mean *due process of law,* that is, by indictment or presentment of good and lawful men; and this, says Lord Coke, is the true sense and acceptance of these words. The better and larger definition of *due process of law* is that it means law, *in its regular course of administration, through Courts of justice.*"

To avoid all misapprehension, it is well to state here, that the power of the Legislature to confer on officers of election, certain specific powers and functions, which, in their nature, require judicial discretion, is not drawn into question.

The right of suffrage must be protected by the exclusion of persons, not possessed of the qualification of voters, and this necessity requires the examination and decision by the officers of election of the right of the citizen to vote.

Hence a special tribunal, to determine certain questions relative to the elective franchise, has had a recognized existence ever since the settlement of the American continent by Englishmen, and has continued under all the State governments.

This special tribunal, called judges of election, has always been either appointed by the local authorities or elected by the local authorities, and were vested with the distinct and universally known powers of enquiring into citizenship acquired by 1st, birth or naturalization; 2d, sex; 3d, color; 4th, age; 5th, or forfeiture

of the right of suffrage by judgment of conviction of such felonies or crimes, in a competent court, as the Legislature may have declared to work a forfeiture of the elective franchise. 6th, suspension or forfeiture by insanity.

All of these powers are conceded to the judges of election. They are admitted and approved by custom and by judicial decision. Some States, Massachusetts and Ohio, have insisted that, if the judges of election err in judgment, they shall pay damages. New York, New Hampshire, Pennsylvania and Maryland, have thought that an honest error of an officer exercising the conceded functions of a judge of election, should not be punished more than the judgment of any other judicial officer, except malice or corruption be shown.

The first four powers, as explained above, and vested in the election officers, constitute, in Maryland and all the other States, the qualifications of a voter; and they must be established to the satisfaction of the judges of election, who being usually "of the vicinage" know all these facts by common reputation and notoriety.

The 5th and 6th powers embrace the power to make effective the disfranchisement of citizens who, having all the qualification of voters, are excluded by reason of some forfeiture, apparent by the judgment of conviction of a competent Court, or in case of insanity, by inspection or other proper proof, such as letters of guardianship.

But the possession of these powers by the judges of election, does not imply that the power to try citizens for felony, to pronounce the judgment of conviction, and then to exclude the voter on the judgment rendered, has or can be confided to the Officers of Registration.

In addition, the Judges of Election were formerly empowered to ascertain the property qualification when one was required. This was an absolute qualification, like sex, or age, or residence, without which the right to vote did not attach; differing entirely from the power to try for crimes parties never found guilty in a competent court, and then to adjudge the forfeiture of the conceded pre-existing right on the sole and only ground, that the Registrars are satisfied of his guilt, though he be not convicted.

Can it be supposed that the Constitution can or would authorize the Registrars to ascertain if a party has been guilty of murder, larceny, burglary or bribery; and if they are satisfied that he is guilty, to carefully exclude him from voting?

And yet the Registrars are authorized to enquire into and ascertain, if a citizen has borne arms against the United States, or adhered to their enemies, giving them aid or comfort; whether he

has unlawfully sent money, goods, or letters, or information within the military lines of said enemies, or has done other disloyal acts; and if they are satisfied, *their satisfaction* is to take the form of a judgment of disfranchisement. Now, to rscertain the guilt of the voters, the same evidence should be required, to be given under the same guarantees as in a trial for the crime of treason. Suppose a Federal Court had tried a citizen for treason and he had been acquitted, would this bar the disfranchisement?

Disfranchisement is a portion of the punishment of a party committing treason, and can it be enforced before the party is convicted of treason and attainted by judgment? Blackstone says, unless attainted, the traitor killed on the battle-field does not forfeit his estate; but the Registry Law denies this doctrine of Blackstone, and undertakes to punish a man before he is found guilty.

What are Ex Post Facto Laws?

The disqualification, including the test oath, declared by Section 4 of Article 1, of the Constitution of Maryland, adopted in 1864, and the provisions of the Registration Act of March 24, 1865, enforcing such disqualification and test oath, are violations of Section 10 of Article 1, of the Constitution of the United States, declaring that "no State shall pass any Bill or Attainder or *ex post facto law.*"

What is an *ex post facto law?* In Calder *vs.* Bull, 3 Dall. 386, Mr. Justice Chase treats this question of Constitutional Law at length, and defines *ex post facto lwws* as follows:

"I will state what Laws I consider *ex post facto laws, within the words and intent of the prohibition,* (of the Constitution of the United States.)

1. "Every law that makes an act done before the passing of the law, *and which was innocent when done,* criminal, and punishes such action;

2. "Every law *that aggravates a crime,* and makes it greater than *when committed;*

3. "Every law that changed a punishment and inflicts a greater punishment than the law annexed to the crime;

4. "Every law that *alters the rules of evidence,* and receives less or different testimony than than the law required at the time of the commission of the offence, in order to convict the offender."

This case has been the basis and foundation of the construction of *ex post facto* laws, and has been followed in all the States, and is re-affirmed in

Fletcher *vs.* Peck, 6 Cranh, 87.
8 Pet. 88.
11 " 421.
Carpenter *et al. vs.* Commonwealth, &c. 17 How. 463.

In Watson *vs.* Mercer, 8 Pet. 110, the Supreme Court of the United States declares that to be an *ex post facto law*, "which punishes a party for acts *antecedently done*, which *were not punishable at all*, or *not punishable to the extent, or in the manner prescribed.*"

Section 17 of the present Bill of Rights of Maryland, which is copied from the first Bill of Rights, is in the same terms.

See also, 3 Story on Constitutions, § 1339.

The disqualifying acts and words, mentioned in the Constitution of 1864, *are all*, by the force of the language used, retrospective; and so are the acts and words enumerated in the test oath.

In fact the Constitutional Convention voted down, by 12 yeas to 48 noes, a position to make the disqualification prospective, beginning on the 1st day of January, 1865.

We contend that the Constitution of 1864, by its disqualifying clauses and test oath, makes acts done and words uttered before their enactment, and which were not punishable when done or uttered, criminal, and punishes such acts and words; that it aggravates the punishment, and that it changes the rules of evidence upon which conviction may be had. The failure to take the oath is made proof of guilt, sufficient to exclude the voter; and any evidence that *satisfied the Registrors* is sufficient to find the applicant guilty of treason against the United States, and enforce a punishment against him, whereas the Federal Constitution, Section 3, Article 3, says, that two witnesses to the same overt act, or confession in open Court shall be required to convict.

Respublica *vs.* Gibbs, 3 Yeates, 329.
Wynehamer *vs.* People, 3 Kernan, 384.
Green *vs.* Briggs, 1 Curtis, 411.

What law of Maryland forbade or punished treason against the United States?

No such law was in existence at that time; nor is there such a law in existence now; nor is it competent for the State to enact such

a law. But it is assumed that the State of Maryland has an absolute right to fix the elective franchise of her voters, that she has done so, and that no tribunal on earth can reverse her action, and that her exclusion of some citizens is not a punishment, but is a mere determination of the qualification of her voters.

The force of these objections would be greater, if they did not assume what is in controversy, namely: that the exclusion of certain citizens from the elective franchise is not a punishment, but is the mere enforcement of her sovereign rights, to determine who shall vote at her elections.

But this is not so—the Constitution enumerates certain disloyal acts, and annexes to the past commissions of these acts, a punishment, which had not been pronounced antecedent to the commission of the acts.

The case of Taylor *vs.* Porter, in 4 Hill, page 104, shows, that the disfranchisement of a citizen must take place according to the due course of law; and the deduction we draw is not that the Constitution of Maryland is not competent to disfranchise her citizens for crime, but that the Constitution of the United States prohibits her from inflicting on them this disfranchisement, by an *ex post facto law*.

It is true that there are general declarations of the Courts that the States have the absolute right to determine the qualification of its voters, but we are under no necessity of controverting this proposition, for we complain that two-thirds of the citizens of Maryland, who have the necessary qualifications to vote, are disfranchised by judgment of the Registrars, in pursuance of a law enacted *ex post facto*.

The qualification to vote, and the forfeiture of that right, are different terms, and are cognizable under different rules.

When the forfeiture is pronounced by the judgment of a competent tribunal, or follows as the result of that judgment, the officers of election can enforce it by excluding the party convicted; and they can investigate the fact, whether the conviction has taken place, but they cannot try the party for the crime, and find him guilty, and then enforce the *ex post facto* provision of disfranchisement against him.

This we claim, is within the province of the prohibition of the Federal Constitution, because at the time that the treason against the United States was committed, and the disloyal words spoken, there was no law, Federal or State, which annexed the punishment of disfranchisement to the commission of treason against the United States, or to utterance of disloyal words, or to the unlawful sending of letters, goods or information in the military

lines of the enemies of the United States, or to the showing of a disloyal countenance.

The Government of the United States has passed Statutes, punishing the crimes of treason, misprison of treason, sedition, conspiracy, correspondence with foreign, or rebel Governments, or their agents, and enlisting soldiers against the United States.

United States Statutes, 30 Apr., 1790,
" " " 30 June, 1790,
" " " 31 July, 1861,
" " " 6 Aug., 1861,
" " " 17 July, 1862,
" " " 25 Feb., 1863.

These Statutes cover all the offences, and provides all the punishments, which the United States has deemed proper to declare; *and no such punishment as forfeiture of the elective franchise is declared.*

The Constitution of Maryland has undertaken to assist the United States in the punishment of offenders against its laws, and have added *ex post facto*, disfranchisement to all the offences punished by those Statutes; and has even gone beyond them, and declared acts, and even words, offences against the United States, which that sovereign and paramount Government has never undertaken to punish.

The State of Maryland has no statute providing for offences against the United States; its only law on the subject is the Statute of 1862, ch. , which provides for the punishment of treason against the State and disloyal offences.

Hence we claim that the disfranchisement of citizens, and the exaction of the test oath are *ex post facto* laws, and as such null and void.

As to the oath, see the cases above quoted in 3 Yeates, 329, and 3 Kernan, 384.

In addition, we claim, that the disfranchising clauses and test oath are necessarily, nullities, because the State of Maryland has nothing to do with treason against the United States, the exclusive power and control over which is vested in the United States.

The People *vs.* Lynch, 11 John. 449.
Rawle on the Constitution, 140—1.
Sergeant " 371—2.
3 Story " § 1206.

Upon what principle can the infliction of a punishment or forfeiture be justified in the case of a State, which undertakes to enforce it, in a matter not only where it has no jurisdiction, but where the whole control is vested in another Government.

The United States are sovereign, and are capable, and vested with the exclusive power of punishing treason and other crimes against their peace and dignity; and the State of Maryland might as well undertake to aid the Federal Government in collecting its import duties, or in sending abroad diplomatic agents, as to interfere with the punishment of offences against that Government.

But these enactments are an *ex post facto* interference, and obstruct and hinder the powers and policy of the Federal Government, if they can be sustained, and hence show the wisdom of the prohibition contained in the Constitution of the United States.

Suppose the Federal Government should not desire to punish certain offences against it, and should fail to bring parties to trial, or should condone, or pardon them, specially, or by general amnesty; yet the loyal State of Maryland assumes to be more righteous than the Federal Government, and refuses to release its *ex post facto* disfranchisement, when the Federal Government, who is the party offended, and who has, by law, exclusive jurisdiction over the offence, pardons the offender; and thus, *pro tanto*, renders void and of no effect, the Executive pardon, while affording a phenomenon never before seen in legislation:

1st. By punishing an act or mere words, and inflicting a penalty not declared at the time of the commission of the act or utterance of the words.

2d. By inflicting the punishment in advance of, and without a trial or conviction by a competent tribunal.

3d. By inflicting a punishment for acts committed against another sovereignty, which has the exclusive jurisdiction over the alleged acts.

Section 4, *of Article* 1, *of the Constitution and the Registry Law, are in the nature of a Bill of Attainder, which includes also Bills of Pains and Penalties.*

Smith's Com. on State Law, § 230.

In forbidding Bills of Attainders and of pains and penalties, it was the intention of the Federal Constitution to carefully guard the citizen from the loss of any right or property, except by and through the judgment of the ordinary judicial tribunal; but this intention will be defeated, if the Constitution of Maryland be held valid to declare that, without trial and conviction, certain classes of persons are disfranchised and disqualified, and then to provide a special tribunal, not exercising the usual judicial functions, for ascertaining the names of the parties.

By this process two-thirds of the citizens of the State of Maryland have been attainted by Legislative act, the operation of which has been fixed by Executive Appointees, called Officers of Registration, and, during the progress of this vast attainder no judicial tribunal, competent to try a citizen for a crime, and pronounce judgment against him, has been called on to act.

Two-third of the voters of Maryland have been disfranchised by the action of the Legislative and Executive Departments of the Government alone, without the concurrence or intervention of the Judicial Department.

Insisting always that the forfeiture of the elective franchise cannot be decreed by the Registrars, or even by the officers of Election, (which the Registrars are not,) who only have power to ascertain the qualifications of voters, and their disqualifications by judgment of a competent Court, we claim that disfranchisement of the majority of the citizens of Maryland by the Registry Act, without the aid of the Judicial Department, is an enormous and oppressive Bill of Attainder, and of Pains and Penalties, and is therefore unconstitutional, and void.

Not only is it claimed that the test oath is illegal, but also those provisions of the Registry Law which change the rules of evidence, as defined in the Federal Constitution as the only proof of treason and which aggravate the punishment of treason even before conviction, are asserted to be *ex post facto*, as defined in Calder *vs.* Bull, and the cases following it.

The grounds, upon which the three Judges of the Court of Appeals of Maryland, who delivered their opinions, sustained the Registry Law, are not to be easily gathered and condensed.

Ch. J. Bowie, (side paging 18, 19,) seems to question the authority of the State Judiciary to declare void a provision of its own State Constitution; and, (p. 43, side paging,) claims that a presumption must be indulged in favor of the validity of laws.

Mr. Justice Weisel (p. 80, side paging,) adopts this doctrine of presumption and says, "that in doubtful cases of alleged conflict, Courts will support the Law or Constitution that is assailed, leaving it to the Supreme Tribunal of the Union to determine the question in the last resort."

This general doctrine of presumption is no doubt a strong argument in favor of the validity of the proscriptive legislation of Maryland; and when thus invoked by its Court of Appeals it is not unreasonable to regard it as one of the strongest arguments in its favor. But. as upwards of 50,000 voters of Maryland, constituting nearly two-thirds of her voting population, are disfranchised by this legislation, it is not improper to ask this Court not to sustain that legislation, upon the ground of presumption alone.

Ch. J. Bowie asserts that, "the right of suffrage being the creature of the organic law may be modified or withdrawn by the sovereign authority which conferred it, *without inflicting any punishment on those who are disfranchised.*"

And he then asserts, that the acts for which the Citizens of Maryland are disfranchised are not *crimes.*

"But these acts *are not defined as crimes; they could not be prosecuted as such* in any Court of the State, or any judgment or conviction be had under the section referred to." P. 38, side paging.

Mr. Justice Cochran asserts, the unqualified control of the State over suffrage, and says, that whether disfranchisement be or not a punishment, depends on the intention of the Legislature. (p. 30.) By a parity of reasoning, the sending a man to the penitentiary or gallows might or might not be a punishment, according to the intention of the Legislature. If intended as a punishment, it would be illegal; if not so intended, the man would be properly hung.

Mr. Justice Weisel, (p. 105, side paging,) says, "the denial of the right [of voting] to those enumerated as disqualified in the 4th Section cannot, with any greater propriety, be regarded as a punishment," than the exclusion of Africans, females, aliens, minors, &c.

It is believed that these quotations show the concurrence upon which the validity of the Maryland Laws were maintained.

These views assert the absolute control of the State over the right of franchise.

This right is not controverted *with the qualification of subjection to the Federal Constitution.* No other doctrine has ever been maintained on behalf of the Relator.

The Court of Appeals deny the qualification—insists that the Federal Constitution in no form controls the absolute sovereignty of the State in determining or withdrawing the franchise of voting.

Ch. J. Bowie's opinion, (p. 25, side paging.)

Admit this doctrine, and what will prevent the seceding States from copying the Maryland Laws and test oath, with the omission of the words United States? or from declaring every citizen, who expressed his sympathy by word or deed with the Federal Government in the late rebellion, as disqualified from suffrage?

The doctrine maintained by Chief Justice Bowie, would require the Supreme Court of the United States to approve the validity of a disqualifying *ex post facto* clause like this.

But admit the sovereign right of a State to determine the right of suffrage, free from the restraint of the Federal Constitution, yet we must go further to deny the petition in this case.

The Relator shows that the State of Maryland has conferred the right of suffrage on him; and asserts that it undertakes to forfeit that

right for words spoken antecedent to the passage of the forfeiting law; to superadd an aggravation to the crime of treason against the United States; and to change the rule of evidence by which that crime is punished and proven.

But this disfranchisemement is justified by Court of Appeals, *because it is no punishment.*

In this day of Constitutional liberty and freedom, the highest Judicial Court of a State declares that the disfranchisement of 50,000 of its voters is not a punishment!

The question is not about the qualifications of the Petitioner. It it not denied that he has them. The question is, whether, having these qualifications, he can be decreed or adjudged to have forfeited his franchise by a disfranchising law, passed subsequent in time to the act for which disfranchisement is decreed.

While the State may refuse to grant the elective franchise, as it may refuse to grant its lands, or the rights of tolls or of piscary; yet when the State has granted the franchise, or the lands or the rights, then the inquiry is, whether, by an an *ex post facto* law, which ignores the trial by jury, and the whole Judicial Department, the citadel of the liberties of a free people, its best and noblest bulwark against the violence of party, and the ephemeral excitements of the hour and day, these rights, immunities and privileges existing in a freeman, can be confiscated and forfeited.

If the State had passed a law, declaring the disqualifying acts and words criminal, and that the parties guilty of the acts or of the words, triable by indictment in due course of law, and upon conviction, that they be adjudged disfranchised, then, if the law be *ex post facto*, it is not denied that, being criminal, it would be void; yet because the same result is attained without trial by jury, through an *ex post facto* law, it is upheld because the ordinary and due course of law has not been followed, and that that which would be a punishment, if inflicted according to law, by a Court, ceases to be a punishment when arbitrarily fixed by the Executive Star Chamber Commissioners, that have reduced the State of Maryland to a subjection unparalleled in the history of free Government.

All of which is respectfully submitted,

R. J. BRENT,
REVERDY JOHNSON,
For Appellant.

Supreme Court of United States.

DECEMBER TERM, 1865. — No. 362.

THOMAS ANDERSON, vs. JOHN W. BAKER, GEORGE ER AND JULIAN MAGRUDER.

Supreme Court of United States,

December Term, 1865.----No. .....

THOMAS ANDERSON,

vs.

JOHN W. BAKER, GEORGE ERNEST AND JULIAN MAGRUDER.

Appeal from the Court of Appeals of Maryland.

APPELLEES' STATEMENT AND POINTS.

This cause originated in the Circuit court of Montgomery county Maryland, by filing therein on the 29th of August last, an application of the appellant to the court against the appellees for a Mandamus, commanding them, as Registers, to register his name in the column of legal voters in the Fourth Election District of that county, under the Constitution and Laws of Maryland. The appellant alleges in this application, that he has long been and then was, a citizen of that county, and entitled to vote in the Fourth Election District, &c., &c.; that under the authority *supposed* to be conferred by the First Article of the Constitution of this State, *alleged to have been adopted*, and by the Act of eighteen hundred and sixty-five, ch. 174, the appellees have been appointed, and now are exercising the functions of officers of registration of voters in that District, &c.; that the petitioner appeared before these registers, and personally demanded that his name should be unconditionally registered by them as a legal voter, without requiring him to take the oath prescribed, on the ground that *he pronounces* so much of the New Constitution of Maryland, and of this Act of the Legislature of that State as confer those despotic powers on regis-

1st. That the First Article of the Constitution of Maryland, and the Registration Act, are void, because they assume to authorize these officers of Registration to disfranchise citizens of Maryland, who decline to take the retrospective oaths prescribed therein, which is a violation of the Federal Constitution.

2nd. That this clause of the Constitution, and this Article are void, for the further reason that they will destroy the republican form of Government guaranteed by the 4th Sec. of the 4th Art. of the Constitution of the United States.

3rd. That the oath thereby required is null and void, because it is an "*ex post facto*" law, and prohibited by the Tenth Section of the First Art. of the Constitution of the United States.

4th. That this clause in the State Constitution, and that Act of the General Assembly, are in the nature of a bill of attainder, and as such, null and void, under the Tenth Sec. of the First Art. of the Constitution of the United States.

5th. That unless these Registers be restrained, the petitioner and others will be deprived of their property without due course of law, contrary to the Fifth Art. of the Amendments to the Constitution of the United States.—Pages 1 and 2.

This Circuit court on the same day passed an order requiring the Registers, the appellees, to show cause by the 12th of September following, why this writ should not be issued as prayed.—Pages 3 and 4.

Two of the Registers answer this petition, showing cause, and stating that they do not know the facts to be true on which the petitioner sets up his claim to be registered, and they leave him to prove the same as he may deem proper.

They admit that they have been duly appointed Registers, and are exercising the functions and duties of that office.—They deny that they have assumed to act as a board of enquiry over the loyalty of their fellow citizens, or to exclude legal voters from Registration, or have committed any oppression on the petitioner or others.

They admit that on the twenty-ninth day of August eighteen hundred and sixty-five, while they were discharging their duties as Registers of Voters, &c., the petitioner appeared before them, and demanded that his name should be unconditionally registered by them as a legal voter, for the reasons stated by him in his exhibit.

They deny that they have declined to recognize his just right and claim, or have resolved to reject him from the registry of legal voters,—on the contrary, he refused to comply with the Constitu-

tion and Laws of the State of Maryland, and to take the oath required therein, in order to enable them to decide upon his claim to be a legal voter,—they deny the necessity of the interposition of the court to protect the rights of the petitioner or other citizens, and all his statements or opinions in relation to the Constitution of this State, being in violation of the Constitution of the United States, or this registry law being in violation of either of these Constitutions; and they deny the power of the court to issue the Mandamus, and assign causes and reasons why the Mandamus cannot be issued, which causes and reasons their counsel will maintain as points in the Court of Appeals. Pages

One of the Registers, Julian Magruder, in his separate answer, among other things, admits the facts stated in the petition, avers that the petitioner refused to take the oath, and that therefore, he declined to register him. Page

The petitioner then moves the Circuit court to quash and set aside the returns made by the defendants:

1st. Because each of them is defective, inconsistent and insufficient on its face.

2nd. Because the said returns and each of them fail to show any legal cause or justification for the refusal of said defendants to register the relator as a legal voter in the Fourth Election District of Montgomery county.

3rd. For other good and sufficient reasons apparent on the face of said returns. Page

Whereupon the Circuit Court passed the following order:—

On consideration of the foregoing petition, answer and motion to quash, the court being of opinion that no sufficient grounds are stated in said petition for the interposition of this court in the matter thereof, it is ordered that the motion to quash said returns of the said defendants be and the same is hereby overruled; and it is further ordered, that the said [Petition] be and the same is hereby dismissed with costs of this court; from which the petioner prayed an appeal to the court of Appeals of the State of Maryland.

The appellees contended in the court of Appeals of Maryland that the court below correctly refused to quash and set aside the answers and returns of the defendants, and dismissed the petition of the petitioner for the following reasons assigned therein:

First. This Circuit court had no jurisdiction over the subject matter of this petition.

1st. The political department of the government of the State of Maryland, having determined that the Constitution was ratified by

the people of this State, that decision cannot be inquired into by any judicial proceedings in this State,—the judicial power of the State adopts and follows the decision of the political department on that subject.

7 Howard's Rep., 1, Luther vs. Borden.
20 Md. Rep., Miles vs. Bradford.

2nd. Because the courts of this State having necessarily by their organization, and by the execution of the powers conferred on them by the State Constitution, assumed its validity and obligation upon themselves and the people of this State, the courts of the United States will adopt and follow these decisions of the courts of the State in questions concerning the Constitution and laws of the State, and refuse to entertain any proceeding calling them in question.

7 Howard's Rep., 1, Luther vs. Borden.
20 Md. Rep., Miles vs. Bradford.

3rd. Because the right of suffrage in the States belongs exclusively to themselves, and is restricted and regulated as the people thereof may therein prescribe, with which the courts of the United States have nothing to do; and so far as the Constitution of the United States has provided for any emergency of this kind, and authorized the General Government to interfere in the domestic concerns of a State, it has treated the subject as political in its nature, and placed the power in the hands of that department, and not in the courts.

2 Scammon (Ill.,) 395, Spragins vs. Houghton.
2 Story on Con., 59, 61, 62, 66, sections 581, 582, 583 & 585.

"Ex post facto" laws:

Smith's Com. on Stat. &c., 366, sec. 231, page 370, sec. 234.
Marshall on Con. 147, 512, 519.
1 Kent's Com. 408, '9.
3 Story Com. 212, sec. 1339.
9 Gill, 306, Bougher vs. Nelson.
Sergant on Con. 337.
17 How. 463, Carpenter vs. Cown.
Code of Maryland General Public Laws, Page 252, sec. 202,
1862, ch. 235, Maryland Laws.
Maryland Declaration of Rights - art. 17 -

Bills of attainder:

Smith's Com., 365, sec. 230.
3 Story, 210, sec. 1338.
6 Cranch 322 Fletcher vs. Peck. -

Guarantee of Republican form:

3 Story, 679, sec. 1807, &c., 8, 9, 10, 11.
Howard U. S. Reports 1, 42, 43, 44.
2 Curtis' His. of Con. of U. S., 471, '2.
Rawle on Con., 141.
6 Gill 391, Methodist Church vs. The Mayor &c.
15 Md. 459, Mayor & City Council of Baltimore vs. Board of Police.

the people of this State, that decision cannot be inquired into by any judicial proceedings in this State,—the judicial power of the State adopts and follows the decision of the political department on that subject.

7 Howard's Rep., 1, Luther vs. Borden.
20 Md. Rep., Miles vs. Bradford.

2nd. Because the courts of this State having necessarily by their organization, and by the execution of the powers conferred on them by the State Constitution, assumed its validity and obligation upon themselves and the people of this State, the courts of the United States will adopt and follow these decisions of the courts of the State in questions concerning the Constitution and laws of the State, and refuse to entertain any proceeding calling them in question.

7 Howard's Rep., 1, Luther vs. Borden.
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3rd. Because the right of suffrage in the States belongs exclusively to themselves, and is restricted and regulated as the people thereof may therein prescribe, with which the courts of the United States have nothing to do; and so far as the Constitution of the United States has provided for any emergency of this kind, and authorized the General Government to interfere in the domestic concerns of a State, it has treated the subject as political in its nature, and placed the power in the hands of that department, and not in the courts.

2 Scammon (Ill.,) 395, Spragins vs. Houghton.
2 Story on Con., 59, 61, 62, 66, sections 581, 582, 583 & 585.

"Ex post facto" laws:

Smith's Com. on Stat. &c., 366, sec. 231, page 370, sec. 234.
Marshall on Con. 147, 512, 519.
1 Kent's Com. 408, '9.
3 Story Com. 212, sec. 1339.
9 Gill, 306, Bougher vs. Nelson.
Sergant on Con. 337.
17 How. 463, Carpenter vs. Cown.
Code of Maryland General Public Laws, Page 252, sec. 202, 1862, ch. 235, Maryland Laws.
Maryland Declaration of Rights - art. 17 -

Bills of attainder:

Smith's Com., 365, sec. 230.
3 Story, 210, sec. 1338.
6 Cranch 322 Fletcher vs. Peck. -

Guarantee of Republican form:

3 Story, 679, sec. 1807, &c., 8, 9, 10, 11.
Howard U. S. Reports 1, 42, 43, 44.
2 Curtis' His. of Con. of U. S., 471, '2.
Rawle on Con., 141.
6 Gill 391, Methodist Church vs. The Mayor &c.
15 Md. 459, Mayor & City Council of Baltimore vs. Board of Police.

4th. Because the Constitution and Laws of the State of Maryland have conferred upon these respondents and their colleague, special powers and exclusive jurisdiction over the subject of the Registration of voters as aforesaid, and no court of this State has any jurisdiction by Mandamus to control or direct these respondents in the discharge of their official duties.

8 G. & J., 347, Glenn vs. Fowler and Kennedy.
17 Md., 327, State vs. Jarrett.
18 Md. Rep., 381, Bevard vs. Hoffman.
4 Paige, 25, Walker vs. Deoram.
7 How., 45, Luther vs. Borden.
3 Gill, 497, Savage Man. Co. vs. Owens,

5th. Because by the eighth Article of the Declaration of Rights, it is declared that the Legislative, Executive and Judicial powers of Government, ought to be forever separate and distinct from each other, and no person exercising the functions of one of the said departments, shall assume or discharge the duties of any other, and the issuing of this Mandamus, according to the prayer of the petitioner, would unite and combine powers so declared to be forever separate and distinct; and in fact, make this court the sole officer of registration and the exclusive judge of elections.

20 Md., Miles vs. Bradford.

Secondly. According to the settled authorities in this State and the United States, if this court had jurisdiction, the petitioner has not made out such a case as will authorize this court to grant him the Mandamus prayed for in his petition.

6th. Because by law there is a specific and adequate remedy f

the supposed grievance of the petitioner, and he is not without redress in the premises, if he have any legal cause of complaint.

8 G. & J., 347, Glenn vs. Fowler and Kennedy.
4 Sec. of 1st Art. of Md. Con.
Maryland Law of 1865, sect. 20.
76 Law Lib., 25 mar. 76 top.
Tapping, 10, " 63 "

7th. Because the Court cannot act by mandamus, directly upon these respondents and their colleague, requiring them to do any official act, which by the Constitution and Law of Maryland, is submitted to their *judgment and discretion*, as officers of the registration of voters, or in any manner, control or guide their *judgment and discretion*, in the ordinary discharge of their official duty.

2 Md., 356, Watkins vs. Watkins.
4 Md., 189, Thomas vs. Owens.
12 Md., 329, Green vs. Purnell.
19 Md., 352, State vs. Graves.
Evans' Prac., 410, '11, note.
6 Howard, 102, Brashiers vs. Mason.
17 " 284, [redacted]. United States vs. Guthrie —

8th. Because the issuing of Mandamus by the court is a summary exercise of high judicial discretion, even where the power so to do is conceded; and will be exercised only in cases of necessity, and with caution and prudent reluctance; and when a case is of doubtful necessity, or its probable effects upon the community are of a questionable character, the case does not present those conditions prescribed by the authorities, to entitle it to this writ. But when, as

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in the present case, to grant this writ would be assuming a power never before exercised on a subject of vital constitutional interest to the people of the entire State, and at a time of great public excitement, by which writ the sworn officers of the State may be required to violate their oaths if they obey its command, courts will not hesitate to exercise that discretion they always have in such cases, to refuse to grant the Mandamus, and will leave the petitioner to his remedy, with which the law has provided him.

Tapping, 5, 13, 15 and 17 margin.
19 Md., 374, State vs. Graves.
Tapping, 13, 65 top, and 15, 67 top.

9th. Because the petitioner predicates his right to this writ of mandamus, upon the ground, that the First Article of the Constitution of Maryland, and the Act of 1865, ch. 174, are nullities and of no binding effect in the courts of law or elsewhere; and yet, by the prayer of the petitioner, he prays that the court by Mandamus, to be directed to these respondents, will command these respondents to execute these nullities and law, of no binding effect; and that too, in violation of their provisions.

Tapping, 189, 9 mar., 236 top.

10th. The petitioner having alleged various facts on which he places his right to citizenship and to be registered as a legal voter, and the two respondents, Baker and Ernest, having denied any knowledge of these facts and of the petitioner's right to citizenship, and to be registered, and requiring the petitioner to prove the same, and the case being submitted without replication or proof, there is an entire absence of any evidence in the record of the petitioner's right to be registered as a legal voter, and therefore, under no circumstances, could the prayer of his petition to be registered be granted by the court.

These points the appellees propose to maintain in this court; and to contend that the judgment of the Court of Appeals of Maryland ought to be here affirmed.

A. RANDALL,
Atty. Genl. of Md., for Appellees.